STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5980

Investigation into the Department of Public Service's proposed Energy Efficiency Plan Re: Phase II	)))	Hearing at Montpelier, VT June 29, 1999

Order entered:

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I. INTRODUCTION

This proposal for decision recommends that the Public Service Board approve a comprehensive settlement among the central, active parties to this docket. The settlement, which takes the form of a memorandum of understanding and a number of bilateral agreements, proposes a broad set of energy efficiency programs and a new, innovative manner of delivering them to Vermont's electricity consumers. The expected savings are enormous: the net benefits of these investments over the next five years are expected to total approximately $64.86 million.[1] The settlement is the culmination of more than two years' labor by the Vermont Department of Public Service, the state's twenty-two electric distribution utilities, various consumer and environmental groups, the Legislature, and the Board; and it can rightly be seen as a tremendous achievement, in many ways a new beginning for the provision of least-cost energy services in this state, and a novel solution to what had been seen by many as a froward and almost irremediable problem. For all that, however, the work has only just begun.

In brief, the Memorandum of Understanding ("MOU") and bilateral agreements, if approved, will create a new entity, referred to euphemistically as an "energy efficiency utility" ("EEU"), funded through charges on electricity usage, and directed to design and deliver comprehensive energy efficiency services to Vermont's households and businesses. The EEU will be an independent entity, unaffiliated with any of the state's electric or gas utilities, and it will be under contract to the Board. Routine administration of the EEU's contract will be handled by a contract administrator, and the funds to support the EEU's activities will be managed by a fiscal agent. This tripartite institutional structure, with ultimate responsibility for oversight residing with the Board, is intended to protect not only the EEU's independence, but

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1. Present-valued, in year 2000 dollars. The gross totals of societal benefits and costs are estimated to be $139.38 million and $74.53 million, respectively (2000 $). The benefit-cost ratio is 1.87, which is to say that every dollar of investment yields $1.87 in gross savings. In nominal dollars, the saving should be even greater, since the investments will produce benefits over many years into the future, the value of which is discounted heavily in today's dollars. Exh. DPS-PHM-3; see, also, Docket 5980, Order of 1/19/99 at 5, 16-17 (referred to hereinafter as the "Phase I Order").

also to assure that its performance is continually and closely monitored and that it always has the strongest incentives to operate as efficiently as possible. The EEU, Contract Administrator ("CA"), and Fiscal Agent ("FA") will each be selected through an open, competitive bidding process.

Initially, the EEU will implement a set of energy efficiency programs proposed by the Vermont Department of Public Service ("Department" or "DPS"). These "core" programs will aim primarily at acquiring "lost opportunity" savings — efficiency measures that can only be cost-effectively captured at particular times, such as during new construction or extensive remodeling — from end-users in the four general customer classes found in Vermont: residential, commercial, industrial, and dairy agricultural. But the EEU's embrace can, and should, become more ecumenical: new technologies, changing markets, and its own expertise should all combine to uncover new opportunities for cost-effective savings. The evidence in this docket demonstrates that there is yet a great potential for significant reductions in the state's demand for electricity and, with them, large reductions in our total energy bill.

A. Background and History

The early procedural history of this case is described in the Board's Phase I Order[2] and need not be repeated in detail here. The salient events were the Board's conclusion in Docket 5854 that a new approach to the delivery of energy efficiency services in Vermont was needed, the filing, on May 23, 1997, of the Department's *The Power to Save: A Plan to Transform Vermont's Energy-Efficiency Markets* (the "Plan"), the opening and bifurcation of this docket (the first phase to address jurisdictional issues, and the second to deal with technical details), and the issuance of the Phase I Order, in which the Board concluded that it did in fact have jurisdiction to approve and implement a statewide energy efficiency entity. The Board set out the scope of issues to be taken up in Phase II, and remanded the case to me with instructions to complete the work within six months.

On February 2, 1999, Green Mountain Power Corporation ("GMP"), Central Vermont Public Service Corporation ("CVPS"), and Citizens Utilities Company ("CUC" or "Citizens")

2. *Id.* at 7 and 45.

filed a motion to alter or amend the Phase I Order. By separate filing, all but one of Vermont's municipal utilities (jointly, the "14 Municipals") joined the motion to alter or amend the Order.[3] On February 16, 1999, the DPS filed its opposition to the motion. On February 22, 1999, the Board denied the motion. Notices of appeal were then filed by CVPS, GMP, BED, the 14 Municipals, and the Department.

Around this time, the state legislature was considering a new bill, S.137, which affirmed the Board's authority to create an independent state-wide energy efficiency entity, and, among other things, gave the Board explicit authority to fund the new entity through volumetric (usage-based) charges on customers' electricity consumption. Simultaneously, settlement negotiations among the parties began in earnest and continued into the spring. A status conference was held on April 14, 1999, during which the parties described in general terms the status of their negotiations and the potential issues to be litigated in the absence of settlement. On April 29, 1999, I issued an Order detailing the matters still to be resolved, and scheduled another status conference. The next day, the DPS, CVPS, and GMP filed three settlement documents: the Memorandum of Understanding ("MOU") and two bilateral agreements, one between the DPS and CVPS and the other between the DPS and GMP.[4]

During May and June 1999, the parties continued to negotiate and, one by one, additional signings-on occurred, in most cases accompanied by a bilateral agreement with the Department.[5] Also during this period, parties filed written testimony and exhibits in support of the settlement. On June 1, 1999, the Governor signed S.137 into law.[6] It became effective immediately.

After some relatively minor procedural disputes, an evidentiary hearing was held on June 29, 1999. A number of exhibits were admitted into record: the MOU and bilateral

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3. The City of Burlington Electric Department ("BED"), which is represented separately from the others, did not join in the motion.

4. A note on terminology: I use the term *settlement* to describe the MOU and bilateral agreements ("bilaterals") as a whole. I also refer to the overall venture which the settlement establishes — *i.e.*, that which encompasses the EEU, Contract Administrator, and Fiscal Agent — variously as the "new regime," "new structure," or "EEU program."

5. A number of non-utility parties joined in the MOU, but most had no need of a bilateral agreement.

6. 1999 Vt. Laws No. 60. This Act had the effect of amending §§ 209 and 218c of Title 30 of the Vermont Statutes Annotated.

agreements between the DPS and each of the state's twenty electric companies, a bilateral agreement between the DPS and International Business Machines Corporation ("IBM"), and two schedules describing the programs' expected savings. At the hearing, no party opposed the settlement. In July, the Department filed bilateral agreements with each of the two remaining electric utilities, Barton Village, Inc., Electric Department ("Barton") and Washington Electric Cooperative, Inc. ("WEC").[7] On August 4, 1999, a number of parties jointly filed a brief and proposed findings of fact. On August 17th, additional proposed findings were filed by the DPS and Citizens.

B. Structure of this Order

In order to simplify the drafting of this decision and, at the same time, to assure that all relevant information is available to the reader, I have included as appendices the MOU and the 23 bilateral agreements that together constitute the settlement. Consequently, I have not described the documents in great detail, but have instead concentrated on those aspects of them that appear most critical to achieving the overall objective: namely, the provision of least-cost energy services to Vermont's citizenry.

II. FINDINGS OF FACT AND DISCUSSION

A. General

The settlement, if approved, sets into motion a series of processes that will end in the creation of a new organization, an energy efficiency utility, whose mission will be to deliver cost-effective energy efficiency services to electricity consumers throughout the state. Historically, each of the state's 22 individual distribution utilities ("DUs") bore (and, in fact, still bears) that responsibility. Although there are obvious advantages associated with DU delivery of efficiency services (also referred to as "demand-side management" or "DSM") — *e.g.*, direct knowledge of, and contact with, its customer base — the program design and delivery

7. During the June 29th hearing, the parties agreed to allow these expected bilaterals to be entered into the record, unless written objections were filed within five working days of their submission. Tr. 6/29/99 at 9-11. No such objections were filed. For our purposes here, they are referred to as the "Barton Bilateral" and "WEC Bilateral."

inefficiencies that arise from the multitude of service territories have proven, in certain instances, to be costly barriers to the acquisition of customer and electric system savings. The parties agree that the time for a new approach is at hand.

The EEU will deliver energy efficiency programs statewide. The design and delivery of those programs will draw on the expertise and experience of many people and institutions, among them the Department and the DUs, who have been delivering programs during this past decade. Important objectives of this new strategy are:

- To ensure that all Vermont consumers are given the opportunity to participate in and benefit from a comprehensive set of cost-effective energy efficiency programs and initiatives designed to overcome barriers to implementation;
- To improve the delivery of services in areas where programs have not served consumers well;
- To improve the effectiveness of the delivery of energy efficiency services by eliminating redundant administrative functions in the many separate utilities; and
- To make it easier for energy efficiency businesses to market their services, by eliminating the many different program requirements of the many different utilities that serve Vermont consumers.[8]

The settlement includes committed budgets for the first three years (2000-2002), which cover all (administrative and program) costs of the EEU, the CA, and the FA. Prospective budgets for the next two years are shown, but the actual budgets will be set by the Board after a thorough review of the EEU's performance is completed in 2002.[9]

Year	Budget
2000	$8,490,128
2001	11,157,722
2002	13,519,809

8. Exh. DPS-MOU-1 (hereinafter, "MOU"); 1999 Vt. Laws No. 60; Parker pf. at 14. Unless otherwise noted, I am relying on the witnesses' Phase II prefiled testimony — *i.e.*, that which was admitted into the record during the June 29, 1999, hearing. Other testimony shall be denoted as "Phase I" testimony.

9. MOU, ¶ 17 and Attachment B. As discussed in greater detail in Section III.F., below, the actual total budgets agreed on by the parties (*i.e.*, the sum of the individual utility commitments as set out in the bilaterals) are slightly less in each of the first three years than those given in the MOU.

2003	15,945,344
2004	16,548,503

Under contract to the Board, the EEU will deliver the seven "core" programs outlined in the Plan. The Board will appoint a contract administrator to handle the day-to-day administration of the EEU contract, and will also appoint a fiscal agent to handle the collection and dispersal of the funds for the EEU.[10] The Board will select the EEU, CA, and FA through a competitive solicitation. In 2002, the DPS will carry out an independent evaluation of the performance of the EEU, assess the prospective need for efficiency services, and update estimates of the avoided costs used to evaluate program cost-effectiveness, all of which will inform a Board decision on EEU program budgets for 2003 and 2004. The Settlement also calls on the Board to appoint an Advisory Committee for the EEU, to be comprised of representatives of the DPS, the DUs, consumers, and other stakeholder groups.[11]

A Transition Working Group ("TWG"), chaired by the DPS and comprised of representatives of the DUs and other stakeholders, will be formed. Indeed, it already has been, and it has begun preparing for the transition from the existing utility DSM delivery system to the EEU structure. On July 7th, it filed an "Energy Efficiency Utility Transition Plan," which describes the tasks that the TWG will perform during the coming months.[12]

Lastly, the settlement sets out a process for the development of rules and methods for distribution utility planning ("DUP"), in many ways the next generation of integrated utility planning, but now targeted for companies that primarily provide transport services, rather than the full range of products that vertically-integrated firms typically offered. Here the challenge will be to plan and manage the transmission and distribution ("T&D") system in a manner that minimizes the societal costs of service, now and in the future.[13]

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10. And, presumably, for the CA and the FA itself. This is not explicitly stated in the MOU. Certainly it is a detail that can be dealt with in the bidding and contracting process.

11. MOU, ¶¶ 2-5.

12. *Id.*, ¶ 12 and Attachment B. The TWG does not request Board approval of the July 7th plan.

13. *Id.* at ¶ 28-42.

B. The Need for a New Statewide Energy Efficiency Services Delivery Program

The justifications for intervening in energy services markets to provide efficiency programs were exhaustively examined by the Board ten years ago in Docket 5270.[14] The evidence taken in this and other dockets once more demonstrates that the market failures that prompted the creation of utility-sponsored DSM programs still exist and are still powerful disincentives to the efficient use of energy in this state; there is no need to analyze that evidence again here.[15] Suffice it to say that our experience with those utility programs was varied for various reasons, so that today, facing fundamental economic and regulatory changes in the electric industry, we find that we must adapt our methods if we have any hope of further reducing our wasteful and uneconomic use of energy.

The Board concluded in rendering its decision in the first phase of this Docket that there remain in Vermont significant, cost-effective opportunities to acquire cost-effective energy efficiency savings — savings that can lower customers' bills and reduce the environmental impacts of electricity production and delivery.[16] The Board observed the current trend in DU energy efficiency programs "is for less program spending on cost-effective energy efficiency, less energy savings, and more 'lost opportunities.' For the majority of Vermonters, the structure established in 1990 is no longer working effectively."[17]

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14. Docket 5270, Order of 4/16/90 ,Vol. II at 49-57, Vol. III at 19, 24-27, 37, 57, 151-52 , and Vol. IV at 50.

15. Phase I Order at 8-9; Plunkett Phase I pf. at 4-16; Dockets 5270-CV-1 & -3 and 5686, Order of 9/4/96 at 20. In December 1996, the Board made the point again, this time stating that, even if retail electric competition is introduced, "we are persuaded that there is a strong likelihood that market barriers will continue to impede consumer acquisition of all cost-effective energy efficiency measures even after the establishment of competitive generation markets . . . ." Docket 5854, Order of 12/30/96 at 102, 105-106.

16. Phase I Order at 5-6. The estimates for cost-effective savings are substantial. For example, the DPS estimated that in 1998 the total cost-effective retrofit energy efficiency potential available was 1,315 GWh, including line losses, or 21.6 percent of the total estimated 1998 Vermont electric consumption, also including line losses. Assuming that implementation commenced in 1998, the DPS also estimated the cost-effective retrofit energy efficiency potential remaining in 2003 to be 1,015 GWh (net of core program savings and naturally occurring savings). The core programs are directed primarily at lost opportunities, not retrofit applications. Even so, the DPS estimated that in 1998 the total cost-effective energy efficiency potential in the markets targeted by the core programs was approximately 36 GWh, a still very ambitious number. Mosenthal Phase I pf. at 4-5; exh DPS-1 at 39-40, 55, and 75 (the "Plan").

17. Phase I Order at 44.

The Board found that the evidence in Phase I of this docket demonstrates that the rate of acquisition of energy efficiency resources has declined in recent years in Vermont, while substantial cost-effective opportunities remain untapped, and timely opportunities are being lost. The Board found that acquiring these lost resources in the future, if they can be acquired at all, will be more costly to individual customers and the Vermont economy, and will delay the environmental gains achievable through reduced energy consumption.[18]

In that Phase I decision, the Board accepted the overall principle that the statewide, coordinated delivery of cost-effective energy efficiency programs will be more efficient and more effective than the current structure of delivery by twenty-two distribution utilities. The Board concluded that the statewide delivery mechanism must be an entity focused on maximizing cost-effective energy efficiency savings and independent of distribution utility control.[19]

C. The DPS's Energy Efficiency Utility Proposal

The MOU establishes that "[t]he EEU will deliver the Core Programs consistent with the core program proposals contained in the Plan."[20] While the settlement addresses the manner in which the core programs will be carried out and provides for a process by which program designs may be modified and new statewide programs introduced, the seven core programs describe the initial set of actions that the EEU will take.[21] The programs are described briefly in the subsections that follow.

The MOU sets out broad guidelines for the administration of the programs and outlines a process for modifying them, if appropriate. The EEU will:

- Emphasize lost opportunity markets for all customer segments;
- Emphasize retrofit markets for low-income and dairy farm customers;
- Stress market strategies;
- Coordinate with regional and national efficiency efforts;

18. *Id*. at 44-45.
19. *Id*. at 44, 53-54.
20. MOU, ¶ 3.
21. Parker pf. at 4.

- Target under-served market segments;
- Seek to maximize and facilitate customer contribution to efficiency measure costs, consistent with principles of sound program design;
- Promote development of innovative approaches to energy efficiency; and
- Refine the original core program designs during implementation, in consultation with the Advisory Committee appointed by the Board.[22]

These provisions are consistent with the Plan, but ". . . they do make it clear that the EEU is expected to be flexible, intelligent, and responsive to customers and market forces in implementing and re-designing the programs it is charged to deliver."[23]

1. The Commercial and Industrial Market Opportunities Program

The Commercial and Industrial Market Opportunities Program will assist eligible customers in making efficient choices when replacing equipment or when remodeling — those times when cost of efficiency is lowest and the magnitude of the opportunity is greatest. It will use planned customer investments to "leverage" additional investment in related efficiency measures. The program will employ a combination of detailed design and technical assistance, commissioning of customized efficiency projects, financial incentives delivered both to the end-use customers and to the suppliers of equipment and services, and strategies to coordinate with regional and national market transformation initiatives. The program aims to ensure that commercial and industrial ("C&I") customers do not forego opportunities to capture the cost-effective savings that will be yielded by incremental investment in new, higher efficiency equipment and business systems.[24]

2. The Commercial and Industrial New Construction Program

The Commercial and Industrial New Construction Program will offer eligible customers a package of technical assistance, financial incentives, inspections, and efficiency commissioning services aimed at achieving cost-effective savings in new construction and major

22. MOU, ¶ 4.
23. Parker pf. at 7.
24. Plan at 57-59 and Appendix 1.

renovations. The program will include two program tracks, one for customers engaged in Act 250 permit processes and one for all other customers. The program seeks to ensure that commercial and industrial customers do not lose the opportunities to acquire savings provided by incremental investments during new construction, investments that in the absence of the program would not be made.[25]

3. The Dairy Farm Program

The Dairy Farm Program will expand the successful dairy farm program that has been run by a number of Vermont utilities. The program will offer dairy farms a comprehensive package of services including technical assistance, efficiency cost subsidies, and low interest loans. The program aims not only at capturing savings opportunities when new equipment investments are made, but also at finding cost-effective efficiency retrofit opportunities where no such expenditures would otherwise have been made. The program will target primarily those dairy farms that have not already participated in the earlier utility-sponsored programs. Because approximately 60 percent of Vermont dairy farms have already participated, this program is expected to reach maximum participation in two years, and then be phased out. Thereafter, eligible dairy farm customers may participate in the C&I Market Opportunities program.[26]

4. The Residential New Construction Program

The Residential New Construction Program will introduce high-efficiency technologies and building practices into Vermont. To transform the market in this way, the program will use a combination of cash incentives, home energy ratings, technical assistance, education, direct installation of energy efficiency measures, energy efficient mortgages, and partnerships with public and private construction trade allies. These initiatives will also be coordinated with efforts to adopt and update statewide energy building codes. The program will:

- Create consumer demand for advanced, energy efficient homes;

25. *Id*. at 59-62 and Appendix 1.
26. *Id*. at 62-63 and Appendix 1.

- Encourage the adoption of building practices that will improve the efficiency of homes;
- Secure high levels of compliance with the minimum standards embodied in the Vermont Residential Building Efficiency Standards law; and
- Create a business environment that will support this market transformation.[27]

5. The Residential Low-Income Program

The Residential Low-Income Program will offer services targeted to single-family low-income homeowners and renters, and to building owners, managers, and occupants of low-income multi-family buildings (those with five or more housing units). The single-family component is a coordinated program that builds on the state's weatherization assistance program; it will offer additional measures and services where cost-effective. The multi-family component provides a "one-stop shopping" package of services, including technical analysis, financial assistance, performance contracting arrangements, contractor and construction management, direct installation of measures, and coordination of bulk purchases of efficient equipment.[28]

6. The Efficient Products Program

The Efficient Products Program will aim to transform both the mix of products in the lighting and appliance markets and the decisions that consumers make when purchasing such goods. This effort will involve a combination of incentive payments, aggressive marketing, trade-ally cooperation, and coordination with other regional and national efforts. Initial work will focus on high-efficiency residential lighting products, refrigerators, room air conditioners, and clothes washers. The program will also make maximum use of opportunities to coordinate with and enhance regional and national market transformation initiatives.[29]

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27. *Id*. at 63-66 and Appendix 1.
28. *Id*. at 66-67 and Appendix 1.
29. *Id*. at 67-69 and Appendix 1.

7. The Emerging Markets Initiatives Program

The Emerging Markets Initiatives Program will enable the EEU to develop and implement flexible strategies to promote overall market acceptance of high-efficiency products and services. The program will pursue cost-effective efficiency savings from markets or technologies that are not being fully served by the other core programs, the distribution utilities (through their DUP responsibilities), or the competitive energy services industry. By way of example, the Plan identifies three strategies:

- A Targeted Markets Initiative that will offer special DSM services to those market segments where intractable barriers or substantial untapped savings exist;
- An Innovative Projects Initiative that would accelerate the pace of sales of new and emerging technologies, equipment, systems or practices; and
- A DSM Bidding Initiative that would encourage submission to the EEU of unsolicited bids for cost-effective energy efficiency from customers, energy service providers, trade allies, and others.[30]

8. The C&I Customer Credit Program

The DPS and IBM negotiated an arrangement that allows eligible C&I customers who, subject to specified criteria, implement efficiency measures on their own premises to receive, in payment for those investment, partial refunds of their contributions to the EEU program. See Section II.D.2.i., below for a discussion of this credit program.

9. Projected Savings

The expected savings — in energy, capacity, and societal benefits — are summarized in the following tables.[31] The energy and demand savings are cumulative. The societal costs and benefits are shown in constant, year 2000 dollars (millions).

30. *Id.* at at 69-71 and Appendix 1.

31. Exhs. DPS-PHM-2 and DPS-PHM-3. Energy and capacity savings, in summer and winter, are broken down by program in exh. DPS-PHM-2.

	2000	2001	2002	2003	2004
Energy Savings (MWh)	24,188	54,255	87,254	127,573	171,568
Winter Peak Savings (kW)	4,891	10,962	17,745	26,118	36,878
Summer Peak Savings (kW)	3,420	7,743	12,777	19,085	26,647

	Societal Benefits	Societal Costs	Net Benefits	Benefit/Cost Ratio
C&I Programs				
Market Opportunities	$33.967	$18.206	$15.761	1.87
New Construction	21.794	10.682	11.111	2.04
Dairy Farm	3.538	1.338	2.200	2.64
Subtotal, C&I	59.299	30.227	29.072	1.96
Residential Programs				
New Construction	15.821	7.848	7.793	2.02
Low-Income	19.076	18.133	.943	1.05
Efficient Products	34.709	9.170	25.540	3.79
Subtotal, Residential	69.608	35.151	34.456	1.98
Emerging Markets	10.477	5.313	5.163	1.97
EEU Overhead		3.836		
Grand Totals	$139.383	$74.528	$64.855	1.87

9. Conclusion

The evidence demonstrates that the proposed programs have a high likelihood of generating net savings for Vermont's electricity consumers. Moreover, the savings are expected to be substantial. The program designs appear to strike an appropriate balance between, on the one hand, acquiring savings through direct and immediate assistance to customers and, on the other, transforming markets so as to embed those savings directly in the product stock and construction practices — between, in a sense, vaulting the market barriers and simply breaking them down. Of course, it is not that simple, since even the direct intervention programs have longer-term transformation impacts. What is important, though, is that the strategy be dedicated to minimizing the societal costs of providing energy services: I am confident that, given the uncertainties surrounding the several approaches, this mix of programs has a high probability of producing savings, now and in the future.

Although the scope of these programs remains unchanged from that originally proposed in the Plan, the settlement sets out new budgets for their funding. The budgets are scaled back from the initial proposal to the levels negotiated. The original budgets would have committed $13 million to the EEU in the first year (then 1998) and increased it steadily each year following, so that by the sixth year $17.8 million would have been dedicated to the EEU. The settlement budget starts at $8.5 million in the first year (2000), ramps up to $13.5 million in the third year of program operation, and suggests a possible further increase in funding to $16.5 million in the fifth year. While the Department offers the year four and year five budgets for planning purposes, the distributed utilities have only agreed to budgets for the first three years, 2000 through 2002.

The obvious question follows. If there are opportunities to acquire cost-effective energy efficiency savings that would have justified approval of the budgets originally proposed by the Department, does it make sense to accept lower levels of investment and necessarily forego some increment of savings? The answer is yes, for several reasons. First, although the Hearing Officer in Phase I found that the Plan's proposed programs were "likely to provide substantial net societal benefits to Vermont ratepayers," the Board did not accept those findings for the purposes of definitive program design; rather, the Board remanded the case to me to take

detailed evidence on this matter (among others).[32] The evidence at this time supports only the stipulated budgets. Second, not only is the method of delivering the programs new, but in many ways the programs themselves are novel. Their increased focus on market transformation and the leveraging of customer investments suggests that direct program spending per saved kilowatt-hour will be lower than we have seen historically, which is, all else being equal, a good thing.[33] And lastly, these are budgets for three years only. The future can be cast in stone only for so long: if there are unmet needs in the coming years, I expect the parties and the Board to take appropriate actions to meet them.[34]

Related to this, if only in part, is the absence of programs targeting particular retrofit markets, most notably residential and small commercial. Although certain segments of those markets may be covered by the C&I Market Opportunities Program, the Efficient Products Program, and the Emerging Markets Program, it is not clear to me that other segments will be adequately served; and thus I am concerned that the programs are not comprehensive within the meaning of 30 V.S.A. § 218c. This concern, however, does not rise to a level sufficient to warrant a recommendation of disapproval. Again, this is a problem (if it is a problem) for which remedial action can be taken, after some experience with the new regime is gained.

D. The Settlement

As noted earlier, the settlement now before the Board is comprised of the MOU and twenty-three bilateral agreements. The MOU has two appendices, one describing the "transition planning framework" and the other setting out the total program costs. The MOU provides the framework, goals, and overall procedures that the parties embrace.

The bilateral agreements are between the DPS, on the one hand, and each of Vermont's electric utilities and IBM, on the other. The bilaterals include:

- Party-by-party statements of support for the settlement;

32. Phase I Order at 20-26, 44.

33. Put another way, the benefit-cost ratios of the programs are expected to be higher.

34. And the Legislature, too, if necessary. The new statute sets a limit of $17.5 million on the amount of money that can be raised annually for the EEU program through the legislatively-authorized charge on customers' electricity usage. 30 V.S.A. § 209(d)(4).

- The specific budget commitments of distribution utilities for calendar years 2000, 2001 and 2002, for which Board approval is sought;
- The settlement provisions that each party wants to emphasize;
- Provisions that address the special needs of a particular party to the settlement; and
- Assertions of the "all-or-nothing" nature of the settlement, and the reservations of signatories' rights to litigate all outstanding issues if the Board, in approving the settlement, modifies any of its terms.

All active parties in this docket endorse the settlement: Vermont's electric utilities, the DPS, IBM, Vermont Energy Investment Corporation ("VEIC"), Vermont Natural Resources Council ("VNRC"), and Vermont Public Interest Research Group ("VPIRG").

1. The Memorandum of Understanding

The MOU is comprised of sixty-eight numbered provisions and two appendices that describe:

- The EEU, its goals, and general features of its management structure;
- The institutional relationships of the EEU, CA, FA, Board, DPS, and DUs;
- The "ground rules" for EEU operations;
- The scope of residual DU responsibilities for energy efficiency service planning and program delivery;
- Plans for an orderly transition to the new program;
- Budgets and funding practices;
- The regulatory treatment of direct and indirect costs, including the Account Correcting for Efficiency ("ACE");
- Plans for a collaborative to establish new rules and procedures for distribution utility planning;
- A process for managing the transition to the new structure, *i.e.*, events during the period between the signing of the MOU and the commencement of EEU operations; and
- Allocations of funds among the core energy efficiency programs.[35]

35. MOU generally. Refer to Appendix A to this Order.

2. The Bilateral Agreements

Each electric utility adopts (really, re-adopts) the provisions of the settlement outlined in the MOU, by having entered into a bilateral agreement with the Department.[36] Each bilateral also sets out particular provisions (rate-making and otherwise) that apply only to the signatory utility. In addition, IBM and the DPS negotiated a bilateral agreement that established a program that is aimed specifically at commercial and industrial customers that have not participated in the utility DSM programs. The twenty-three bilateral agreements all treat the overall settlement as a "bottom-line" resolution of the outstanding issues in this phase of the docket. The parties reserve the right to litigate all issues to be considered in Phase II of this docket if the MOU and bilateral agreements are not accepted in their entirety.

Each agreement between a DU and the DPS establishes that DU's allocation of the EEU budget for the first three years, 2000, 2001, and 2002. These allocations represent the total funding contribution each utility has agreed to make to the EEU program during those years. These allocations are key elements of the bilaterals. In the cases of WEC and BED, the bilaterals establish that these DUs may carry out all or major portions of the system-wide programs in their service territories.

The agreements also address a variety of utility-specific DSM program cost-accounting and recovery issues, regulatory compliance requirements, and other matters. All of the bilaterals are appended to this Order; here I want to describe only the more notable features of them.

a. CVPS

In addition to setting CVPS's annual funding commitments for 2000, 2001, and 2002, this company's bilateral resolves several other issues, including:

- The accounting and potential rate-making treatment of the DSM costs incurred by the company prior to January 1, 2000;

36. Each bilateral agreement was entered into the record individually. For simplicity's sake, I refer to each by the name of the utility or company that signed it, as, for example, the "CVPS Bilateral."

- The accounting and potential rate-making treatment of the company's ACE accruals, expenses incurred in connection with its on-going support for the EEU, and expenses associated with distributed utility planning;
- Accounting and potential rate-making treatment of employee severance and related expenses arising out of the transition to the new EEU structure; and
- A cap on any net increase in overall rates associated with the EEU program (rates cannot exceed 100.25 percent of the company's rates in effect at the time the EEU benefits charge is implemented).[37]

b. GMP

Like the CVPS Bilateral, GMP's Bilateral Agreement sets funding levels for the first three years and addresses several other issues, among which are:

- Any claims relating to GMP's DSM performance prior to January 1, 2000;
- The funding and implementation of system-wide programs through the end of 1999;
- The establishment of the EEU benefits charge for GMP customers or the funding of the EEU in the absence of a benefits charge;
- The accounting and potential recovery of costs arising out of the transition to the EEU and any costs thereafter in necessary support of the EEU; and
- Objectives for impacts on overall rates — no net increase in rates as a consequence of the EEU program for at least two years (2000 and 2001).[38]

c. The 14 Municipal Utilities

The agreements with the fourteen municipal utilities establish the utility-specific funding commitments for 2000, 2001, and 2002. Each bilateral also identifies the utility's 1999 budget for DSM, which is relevant to the calculation of rate reductions reflecting the extent to which DSM costs in current rates are displaced by the benefits charge for the EEU program. With the exception of utility-specific information and additional, unique provisions in the Hardwick Electric Department ("Hardwick") and Village of Barton ("Barton") Bilaterals, the

37. CVPS Bilateral.
38. GMP Bilateral; Grimason pf. at 5.

DPS's agreements with these 14 utilities are otherwise identical. The common elements address, among others, the following issues:

- The application of externalities adjustments to EEU programs and to programs conducted by these utilities;
- The T&D avoided capacity costs that may be used for municipal utility DSM programs not associated with the EEU program;
- A Board determination that it is reasonable for the municipal utility to enter into the bilateral and the MOU;
- Clarification that the commitment in MOU ¶ 66 does not create an obligation to act, but it shall apply when the municipal utility chooses to take any action with respect to the approval, establishment, funding and implementation of the EEU; and
- The nature of the utility's DUP obligations.[39]

The Hardwick Bilateral addresses its practice of amortizing certain DSM costs over time instead of expensing and collecting them; the agreement also addresses the treatment of some of these costs in a recent rate case.[40]

The Barton Bilateral addresses its practice of using revenue bond financing (pursuant to Board approval in Docket 5951) to make funds available for DSM programs.[41]

Based upon the evidence in this docket, I find that it is reasonable for each of the fourteen municipal utilities to enter into the MOU and its bilateral agreement.

d. Vermont Marble

In addition to establishing three-year funding levels and embracing the terms of the MOU, the bilateral agreement signed by the Vermont Marble Power Division of OMYA, Inc. ("VM") establishes that only the company's retail load is to be apportioned costs and expenses associated with the EEU program. Accordingly, only the retail load will be eligible for any

39. The Municipal Bilaterals generally,
40. Hardwick Bilateral, ¶¶ 5 and 6.
41. Barton Bilateral, ¶¶ 4, 5, and 6.

system-wide programs approved for EEU implementation. The agreement also deals with certain of the company's DSM cost-accounting and rate-making practices.[42]

e. BED

As do the other utilities' bilaterals, the BED agreement incorporates the MOU but gives BED the right to implement core programs in its service territory, with the exception of the Emerging Markets Program, and upon Board approval.[43] The bilateral sets out the requirements for a BED proposal to deliver programs, as well as minimum standards for approval that the Board should apply when reviewing the proposal. The Board, after notice and opportunity for hearing, would approve BED's proposal if it finds that the anticipated benefits of BED's delivery of the core programs "outweigh the risks or potential inefficiencies of such delivery."[44] The Board may approve BED's proposal with modifications or conditions, and should take all appropriate steps to assure that the programs are properly implemented and meet standards equivalent to those for the EEU.[45]

BED will, of course, remain subject to the provisions of 30 V.S.A. § 218c and Docket 5270, and to traditional principles of regulation, with respect to implementation of programs other than the core programs. With respect to any core programs that it delivers, BED will be subject to the same performance standards as is the EEU, as well as to traditional regulatory review of any expenditures it makes in implementing those programs.[46]

BED agrees to commit $410,000 in calendar year 2000 to fund delivery of the core programs within its service territory. Of this amount, $5,353 is specifically dedicated to funding BED's share of the Emerging Markets Program.[47]

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42. VM Bilateral.
43. BED Bilateral; tr. 6/29/99 at 27-28 (Parker).
44. BED Bilateral, ¶ 3.
45. *Id.*, ¶ 4. Designating BED to implement programs is consistent with 30 V.S.A. § 209(d)(2), which allows the Board to appoint "one or more entities" to deliver energy efficiency programs.
46. *Id.*, ¶ 6.
47. *Id.*, ¶ 1.

Like the bilaterals of the other municipal utilities, BED's Bilateral states that the agreement is contingent upon a finding by the Board that it is reasonable for BED to enter into the bilateral and the MOU.[48]

Based upon the evidence in this Docket, I conclude that it is reasonable for BED to enter into the MOU and its bilateral agreement.

f. Washington Electric Cooperative

The WEC Bilateral establishes that it will directly administer two existing WEC energy efficiency programs, the residential new construction and residential retrofit programs. The agreement establishes that the annual budgets for the two programs will total $155,000. In addition, the agreement commits WEC to annual EEU budget support of $15,000, $50,000 and $75,000 for 2000, 2001, and 2002, respectively. The agreement also addresses DSM cost accounting issues related to the transition to the EEU.[49]

g. Citizens Utilities

The CUC Bilateral includes provisions that explain how some specific MOU provisions addressing cost recovery will be applied to CUC.[50]

h. Vermont Electric Cooperative

The bilateral agreement with Vermont Electric Cooperative, Inc., ("VEC") states that it will continue to provide, through 2002, a subset of DSM services that it has been offering since January 1996. The agreement identifies those services and explains how related costs will be treated for rate regulation purposes. VEC will provide its share of funding for the EEU, identified in the agreement, in addition to providing these services.[51]

i. IBM

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48. *Id.*, ¶ 10.
49. WEC Bilateral.
50. CUC Bilateral.
51. VEC Bilateral.

In addition to the seven Core Programs proposed in the Plan, the bilateral agreement between the Department and IBM proposes a "C&I Customer Credit Program," which will be available to commercial and industrial customers who meet certain eligibility criteria. The specific terms of the program are set out in an attachment to the bilateral. In general, eligible customers may receive payments (drawn from EEU program funding) for cost-effective energy efficiency measures that they install in their facilities. Such payments, in effect refunds, will be capped at 70 percent of the amounts that the customers pay into the EEU program.[52]

The program is limited to customers who have not previously received payments or incentives through utility DSM programs. It has the potential to capture savings not tapped by existing programs. It would encourage such customers to invest in cost-effective energy efficiency measures that customers might not otherwise adopt — *i.e.*, measures with "paybacks" greater than 18 months.[53] The C&I Customer Credit Program will be available in all service territories.[54]

This proposal is reasonable. It allows certain customers to "opt out" of the system-wide programs, but only if they implement energy-saving measures of their own. And, even then, because the refunds cannot exceed 70 percent of their payments into the EEU program, they will still be supporting the EEU's efforts elsewhere, which will have reliability and other system impacts from which they — and all customers — will benefit. Consequently, I recommend that the Board approve this new C&I Customer Credit Program.

j. Rochester Electric

Rochester Electric Light and Power Company's ("Rochester") Bilateral with the DPS states simply that it supports the MOU, will engage in distributed utility planning, and will

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52. IBM Bilateral and Attachment A. Specifically, the refund cannot exceed 70 percent of the amount paid by the customer in the year that the measure(s) was installed and the calendar year either immediately preceeding or immediately following, less any disbursements against those funds already made (presumably, this choice of years allows for payments in the first year of EEU operation). Also, the energy efficiency measures that a C&I customer installs must meet ISO (International Standards Organization) standard 14001, a copy of which was filed by the DPS on August 17, 1999.

53. IBM Bilateral and Attachment; tr. 6/29/99 at 21-23, 36-46 (Parker).

54. IBM Bilateral. Note, however, that the BED Bilateral provides that BED will propose whether this program should be implemented in its service territory and, if so, BED will explain how it intends to do so. MOU, ¶ 26; BED Bilateral, ¶ 2.

provide funds in specified amounts to the EEU during the first three years of the EEU's operations.[55]

k. Conclusion: Bilaterals

For the foregoing reasons, I recommend that the Board approve the 23 bilateral agreements in their entirety.

E. Institutional Structure

1. General

The parties have devised a set of institutional interrelationships that is intended to assure the smooth, unfettered delivery of energy efficiency services to Vermont ratepayers. It is not a particularly complex scheme, but it is nuanced.[56] How do the pieces fit together? Do they, as a whole, create an orderly and effective system of checks and balances? And are risks and rewards appropriately allocated among the several actors, thus aligning their self-interests with the greater public good?

According to the terms of the settlement, the management of this new system is ultimately the responsibility of the Board. There will also be a Contract Administrator, who will handle the routine management of the Board's contract with the EEU, and a Fiscal Agent, who will collect and disperse all funds collected for this program from the DUs, as directed by the Board. The EEU, CA, and FA will all be independent actors selected by the Board through competitive solicitations. The Department will continue to serve as an independent reviewer, bringing issues related to program scope and EEU (and CA and FA) performance to the Board as it sees appropriate. Other parties are also free to petition the Board on these issues. While the settlement calls for the creation of a Board-appointed Advisory Committee to serve the

55. Rochester Bilateral.

56. In its general features, it does not differ much from that originally proposed in the Plan. Parker pf. at 7-8.

EEU, this committee will have no formal authority: it will derive its powers solely from the expertise of its members and the soundness of its advice.[57]

This institutional structure is established by the terms of the settlement. In fashioning it, the parties sought ". . . to create an entity that has a fair degree of opportunity to be creative and flexible, has a contract to provide energy services that are . . . performance-oriented."[58] Their objective is a system that will not only meet traditional performance criteria (quantifiable, such as savings achieved, improvements in program cost-effectiveness, comprehensiveness of services, and so on), but will also encourage the EEU to exercise the initiative and creativity needed to break down barriers and transform markets. Thus, the parties envision an EEU driven, at least in part, by bearing the risks and rewards of its own performance — giving it "a high degree of responsibility for [its] own performance and program design. And we really are asking [it] to take on the task of thinking about the markets [it] serve[s], responding aggressively with new opportunities to those markets and new strategies to those markets."[59]

2. Roles of the Various Entities

The MOU describes in greatest detail the functions that the Board, EEU, Contract Administrator, Fiscal Agent, Advisory Committee, DPS, and distribution utilities will perform in the new system. Here I wish only to summarize the more important aspects of those roles.

a. The Public Service Board

The Board sets the policy and structure for the EEU. It selects the entity to serve as the EEU, defines the terms of its contract with the EEU, and oversees performance of the contract. The Board will also select and contract with the individuals or organizations that will serve as the Contract Administrator and Fiscal Agent. Each year, the Board will review and

57. Tr. 6/29/99 at 60-62 (Parker).
58. *Id.* at 54 (Parker).
59. *Id.* at 55 (Parker).

approve the EEU budgets and allocations among program categories.[60] The Board will also be responsible for setting the charges to collect the monies for the programs from DU customers. And, lastly, the Board will be responsible for resolving any disputes that may arise.[61]

In general, then, the Board is the final authority responsible for directing and reviewing the work of the EEU and the other contractors. Other parties may be called upon to advise the Board (through filings or dockets), but it will retain final responsibility for assuring that the system functions as intended.[62]

b. The Energy Efficiency Utility

The EEU will be an independent organization, perhaps a corporation, under contract to the Board. Its broad mandate will be to deliver comprehensive energy efficiency services statewide. Budgets and program objectives will be set by the Board, but the EEU will be responsible for proposing sensible program designs (and redesigns) and for implementing programs as cost-effectively as possible. The EEU will seek counsel from the Advisory Committee and from any other technical advisory committees the EEU itself appoints. The EEU will be responsible for responding to complaints and comments from the public. The EEU may, of course, reject advice from the public or the DPS or, in response to a complaint, take action differing from that which was requested; and, after review or upon petition, the Board may, of course, direct the EEU to act otherwise. The EEU will make recommendations about program designs and funding.[63]

It is obvious that the contract between the Board and the EEU will be a (if not *the*) critical feature of the new system. It will define the EEU's responsibilities and standards of performance, and will establish incentives for that performance. Properly structured, the

60. Although, for the first three years, the overall budget is set by the terms of the MOU.

61. MOU, ¶¶ 5-6, 10-11, 14, 16, 18-22, 24-27, 31-32, 44, 46-48, 50, 53, 58, 65, and 67.

62. The Board is also charged with certain duties under the new statute. As discussed in Section III.A., below, I conclude that the implementation of the settlement is consistent with the new law.

63. MOU, ¶¶ 2-11, 13, 19, 38-42, 45-46, 48, 52.

contract will assure that the EEU approaches its assignment with enthusiasm, creativity, and initiative, and thus achieve the broad program goals.[64]

c. The Contract Administrator

The Contract Administrator ("CA") will handle the day-to-day management of the contract between the Board and the EEU. It will interpret its terms, administer any contractually-set reporting requirements, and receive and resolve complaints from, or disputes among, affected persons. The CA will have thirty days in which to resolve such matters and then, if unresolved, to present them to the Board. While the CA may, if deemed appropriate, monitor meetings of the Board-appointed Advisory Committee, the CA will have no role on that committee.[65]

The MOU also authorizes the CA to take steps to assure the continuing delivery of energy efficiency programs during the transition to the EEU:

> If for any reason an EEU has not been established by January 1, 2000, the Contract Administrator shall be authorized to enter into such contracts with DUs, upon reasonable notice, until the establishment of an EEU, and each DU shall work in good faith with the Contract Administrator. . . .[66]

This provision gives the parties and Board some flexibility, in the event that the MOU's proposed schedule cannot be met. See Section III.B., below.

d. The Fiscal Agent

The Fiscal Agent fulfills an accounting function, taking in monies collected by distribution utilities, making sure the correct amounts are collected, and dispersing those funds to the EEU and to any other entities funded by the program charges. The FA will also account for the funding of those special activities of the DPS set out in the MOU, *e.g.*, program

64. Tr. 6/29/99 at 84 (Parker).
65. MOU, ¶¶ 5-6; tr. 6/29/99 at 57-59, 64-71, 96-98 (Parker).
66. MOU, ¶ 27.

evaluation. The FA will carry out these functions on behalf of the Board and, accordingly, will keep the Board apprised of the status of program accounts.[67]

e. The Advisory Committee

The MOU calls on the Board to ". . . appoint an advisory committee to the EEU which shall consist of representatives from DUs, consumers, the DPS, and others deemed necessary by the Board."[68] The Advisory Committee ("AC") will be a channel of communication between important stakeholders and the EEU. It will provide advice but will have no authority over the EEU. As DPS witness Parker explained, it will be ". . . independent of the EEU management or control. It is purely advisory to the EEU in its function. It advises the efficiency utility as it sees fit. It is not a corporate entity with legal standing in any proceeding. It may have members who bring with them party status of various kinds. . . ."[69]

f. The Department of Public Service

The Department ". . . will continue to be a party to any [Board] proceeding and will continue, as it does now, to represent ratepayers [and] the public interest in those proceedings. The Department has a specific role as . . . the entity that will be in charge of providing for formal evaluation of the efficiency utility program — programs and program performance."[70] The DPS will also develop and present avoided cost information, necessary to assess program design and expected benefits, for consideration by the Board. In its role on the AC and in its traditional public advocacy role before the Board, the DPS will continue to propose new

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67. *Id.*, ¶¶ 5-6. In response to questioning, DPS witness Parker stated that he expected that the FA and CA would be separate entities. Tr. 6/29/99 at 98-99, 101-102 (Parker). Given the distinct functions that the two perform, it is reasonable to think that the requisite skills for the two are not likely to reside in a single person or organization. But it is not inconceivable, and there is nothing in the MOU expressly proscribing the merging of the two roles in a single entity. The parties and the Board may want to consider this possibility, when the requests for proposals for these positions are drafted.

68. MOU, ¶ 5. The MOU allows the EEU to appoint other advisory committees to serve its program management needs, but this is a prerogative, not an obligation, of the EEU.

69. Tr. 6/29/99 at 104 (Parker).

70. *Id.* at 106.

initiatives that may, or may not, be appropriate for the EEU to take on. The DPS will not have any direct authority over the EEU.[71]

g. The Distribution Utilities

Upon approval of the MOU, the distribution utilities will be relieved of their obligations to design and implement energy efficiency programs (except for those associated with distributed utility planning). Specifically, the MOU calls on the Board to specifically find:

> that the EEU structure and System-wide Program proposal outlined (in the Settlement MOU), when approved by the Board and implemented in accordance with this MOU, shall be considered to fulfill the future obligations of each DU which signs this MOU to plan for and conduct System-wide (DSM) Programs . . . .[72]

The DUs are committed to support the transition to the new structure and to ". . . cooperate in good faith with the EEU . . ."[73] The DUs are free to conduct their own programs voluntarily, as long as they do not conflict with EEU programs; however, the costs of such programs will be borne by the DU and their recovery will be subject to traditional rate-making principles and applicable DSM cost recovery mechanisms (excluding ACE). The DUs are not assigned any management responsibility for the conduct of programs; they will be represented on the Advisory Committee and will, of course, always have the opportunity to petition the Board on matters relevant to them.

3. Effectiveness of the Institutional Structure

The parties' — and the Board's — overall goal is to create an organization that facilitates creative, effective conduct of the program mission, while ensuring that oversight and

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71. MOU, ¶¶ 5-6, 8, 10, 11, 12*ff*. Under the MOU, the DPS has a variety of other obligations that I have not mentioned, but they do not bear directly on its role in assuring that the EEU and other entities perform as expected.

72. MOU, ¶ 16. The expression "System-wide Programs" here refers to the DSM programs that distribution utilities are currently required to deliver pursuant to 30 V.S.A. §§ 218b and 218c and the Board's Orders in Docket 5270, Docket 5330, and any other docket. This finding would apply only to the system-wide programs; any DSM obligations that the utility has with respect to distributed utility planning would still be subject to the requirements of these statutes.

73. *Id*., ¶¶ 12 and 15.

performance incentives (those both contractually defined and intrinsic to the institutional structure) will move actors, especially the EEU, to do their jobs effectively. In assessing whether the proposed structure is adequate to achieve this, I consider the relationships among the components of that structure, the allocations of responsibility and authority, the balance between risks and rewards, and the distribution of "checks and balances." I have organized these considerations in the following three questions:

- Will the public stakeholders, especially DUs and consumer representatives, be given adequate opportunities to communicate their ideas or complaints and will the structure ensure that their interests are adequately protected, in the event that the EEU takes actions with which the stakeholders disagree?
- Can the Board, as a practical matter, manage this structure effectively, given its role as a quasi-judicial agency, charged with the overall regulation of the state's utilities and related services?
- Are there any elements of this structure which pose a real or apparent conflict of interest for any of the key players?

The success of this program over the long term requires affirmative answers to these questions. I take up each in turn in the following sections.

a. Public Participation

The settlement provides an orderly process for interested parties to bring to the Board their concerns and comments on EEU program budgets, plans, and implementation practices. First, any interested party may communicate with the EEU directly. Second, there will be an Advisory Committee, giving those parties appointed to it another means by which to advise the EEU. In addition, the MOU provides that any entity may complain to the Contract Administrator about the EEU's performance under the terms of its contract. The CA will then attempt to resolve the complaint through negotiation. If no resolution is achieved within 30 days of the complaint, the CA is to refer the complaint to the Board for review.[74]

This process is open and fair. It is flexible, provides several ways to communicate with the EEU, demands that the EEU be responsive, but leaves responsibility for the EEU's performance and day-to-day management in the hands of the EEU, where it belongs. The

74. MOU, ¶¶ 5-6, 67.

Board, of course, retains ultimate authority over the EEU and the other entities: but in this regard it will be functioning in much the same way that it does when regulating utilities generally. Although under contract to the Board, unlike utilities, the EEU will nonetheless bear the risks of poor performance, which should provide powerful incentives to satisfy its contractual obligations.[75]

I expect that the contract between the Board and the EEU will require that the EEU develop procedures to allow for public input, and that the EEU will be allocated the resources necessary to perform this function. The Advisory Committee, the EEU's own advisory committees, and the publication of appropriate consumer relations bulletins all will provide valuable channels of communication. In addition the formal complaint process provides an expeditious process for addressing questions about the EEU's performance and other related matters. For all these reasons, therefore, I conclude that there will be adequate means to assure public participation in the new regime, and that potential parties' rights will be adequately protected by the proposed dispute resolution process.

b. Practical Aspects of the Board's Role

The settlement provides a cohesive structure for the management and delivery of the statewide programs. The process requires little day-to-day involvement of the Board members or their staff. The Contract Administrator will interpret the terms of the EEU contract and will assess whether these contract terms are being fulfilled. The Contract Administrator will be empowered to require reports from the EEU and to inquire into its activities. In addition, as already discussed, the settlement provides for a formal complaint process that allows representatives of the DPS, the DUs, or any other person or entity to address problems regarding the EEU performance of its contract terms, and it is reasonable to expect that few complaints (at least, after the early years of program operation) will rise to a level requiring formal Board action.

This is straightforward and appears to me to be well within the Board's expertise and statutory mandates to oversee. In fact, the Board has had experience with an arrangement

75. In contrast, utilities' obligations are set by statute, rule, and case law.

similar in certain respects to the proposal here.[76] The lesson learned is that, so long as roles are well defined and duties properly assigned, a contract-based system can operate effectively.

c. Conflicts of Interest

i. The Public Service Board

Under state law, the Board must ensure that the public's need for energy services, now and in the future, is met at the lowest total societal cost.[77] Thus, whether delivered by an EEU or the utilities themselves, the Board must assure, among other things, that comprehensive energy efficiency services and measures are being deployed. The structure that the parties propose here formalizes certain aspects of the Board's role through contract. It places responsibility for the management of the EEU in the hands of the Board and its contractors, the Contract Administrator and Fiscal Agent. The settlement does not envision that either the Contract Administrator or the Fiscal Agent will have significant management responsibilities, but rather that they will perform certain, limited administrative functions delegated by the Board.

The MOU and the newly enacted amendments to 30 V.S.A. § 209 enumerate specific tasks that the Board will perform. The Board will:

- Select through a competitive solicitation the CA, the FA, and the organization that will serve as the EEU;
- Establish the terms of the contract with the EEU;
- Resolve disputes and complaints;
- Determine funding levels and allocations;
- Evaluate proposals for new program initiatives;
- Review the DPS's evaluation, to be performed and filed in 2002, of the performance of the energy efficiency regime during its first three years;
- Set avoided costs for use in assessing expected program benefits; and
- Conduct and submit to the legislature an evaluation of the EEU's programs.

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76. Docket 5837, Order of 3/15/96 (designation of purchasing agent for QF (qualifying facility) power under Board Rule 4.100).

77. 30 V.S.A. §§ 203 and 218c.

Will the performance of any of these tasks conflict with Board actions in other areas? Is there anything about the tasks and structure that can adversely and improperly affect the Board's ability to perform its duties, both generally and with respect to energy efficiency services?

The answer to both questions is a clear no, for several reasons. First, the Board will have no pecuniary interest in the conduct of the statewide energy efficiency programs, the primary mission of the EEU. Second, the Board remains responsible for ensuring that the overall cost of electricity services is minimized. The new management structure does not change this. If the EEU proves ineffective in delivering the services called for by its contract, the Board will be free, and motivated, to devise remedies.[78] There is nothing in the new structure that should change the Board's interest in capturing the full potential of cost effective energy efficiency to minimize the electricity bills of Vermont consumers and to protect the Vermont environment. Third, the public, competitive processes for selecting the EEU, the CA, and the FA offer a strong assurance that the best candidates for the jobs will be chosen. Fourth, there are open, public processes for resolving disputes, considering budget allocations, and determining total budget commitments. And fifth, the Board must report to the Legislature on the achievements of the programs.

ii. The Department of Public Service

The Department retains responsibility for appearing as a party in any Board proceeding regarding the EEU or the MOU. It will continue, as it does now, to represent the public interest in such proceedings. The settlement specifically assigns the DPS responsibility for:

- Providing a formal evaluation of the programs approved by the Board for EEU implementation;
- Updating avoided costs;
- Conducting an evaluation relative to the EEU during calendar year 2002; and

78. Including dissolve the contract and hire a new EEU. There should be contract provisions that dictate the conditions under which such actions could be taken.

- Chairing the Transition Working Group.[79]

These responsibilities are essentially the same as those that it has historically borne. Should, however, the Board be concerned that the DPS's advocacy of the EEU-structure will undermine its ability to fairly and objectively evaluate the system's functioning and achievements?

The Department states that its primary purpose is to be a responsible, competent advocate for the public, and it firmly asserts it can provide effective public advocacy in matters relating to the EEU, just as it has when reviewing and litigating the implementation of utility DSM programs whose designs were supported by the Department.[80] The Department states that it will be guided in performing its roles by relevant Board orders and statutes, including but not limited to

30 V.S.A §§ 202a [state energy policy], 209(d) [Board-approved energy efficiency programs and independent implementation entity], and 218c [least-cost planning].[81]

I am quite confident that neither the new structure nor the Department's role in creating it will threaten the integrity of the DPS's evaluations of the EEU or its calculations of avoided costs. First, though one can surmise that the effects of its advocacy for the EEU might lead it to deflect or ignore legitimate criticisms of the EEU, one can just as reasonably argue that that very advocacy will propel the DPS to be vigilant in its scrutiny of the EEU, and to take all steps possible to assure that the EEU is in deed, rather than merely word, performing as expected. Second, the public process that accompanies any evaluation provides a strong check on any potential conflict, or appearance of conflict, of DPS interests.[82] And third, the Board

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79. MOU at ¶¶ 11 and 18, and Attachment A. Paragraph 11 seems to confer upon the DPS a general duty to evaluate the programs and EEU performance. The frequency of such evaluations is not stated. Paragraph 18 describes a specific evaluation to be performed in 2002, in advance of a Board decision on the EEU's budgets for years 4 and 5 (2003 and 2004). Presumably, the ¶ 18 evaluation would also satisfy the DPS's ¶ 11 obligation, in that year.

80. Tr. 6/29/99 at 125 (Parker).

81. *Id*. at 113-114 (Parker).

82. MOU, ¶¶ 11, 18. These paragraphs require that the Board review and, if justified, approve the Department's evaluations of the EEU and its programs, but only after other interested parties are given the opportunity to review and comment on the evaluations. Also, provision is made for technical workshops to be held. This is a sensible procedure. Even so, I believe it would be improved if the Department were to invite public input during the planning stages of the evaluations, so that evaluators may be alerted to issues

(continued...)

must assure that independent evaluations of the programs are performed. The recently amended Section 209 of Title 30 mandates that the Board shall:

> (10) provide for the independent evaluation of the programs conducted under subsection (d) of the section; [and]
>
> * * *
>
> (12) Require verification, on or before January 1, 2003, and every three years thereafter, by an independent auditor of the reported energy and capacity savings and cost-effectiveness of any savings reported by any entity appointed by the board to deliver energy efficiency programs under subdivision (d)(2) of the section.

The Board can assess at the time what will be required of these evaluations to ensure that they are objective and fair. I fully expect that the Board and other parties will see no reason to doubt the Department-sponsored evaluations, but, if there is cause, the Board can remedy it by commissioning its own evaluations.

iii. Other Parties

The settlement identifies for the DUs and others important roles in creating and implementing the EEU program. The MOU identifies specific penalties for DUs that do not comply with its terms.[83]

The effects of the settlement on the DUs are straightforward. The EEU will take over the design and delivery of efficiency programs throughout the state, and its activities will be deemed to satisfy the DUs' on-going obligations under various statutes and dockets to provide DSM services.[84] In addition, Board approval of the MOU:

> shall be considered to resolve all claims based on actions or failures to act prior to January 1, 2000, that a DU which signs this MOU failed to satisfy its DSM obligations to customers under 30 V.S.A. § 218c, 218b; the Board's orders in Docket Nos. 5270 or 5330; or any requirements to plan for and conduct System-

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82. (...continued)
that warrant investigation *before* the evaluations are completed. Consequently, I recommend the Board direct the DPS to conduct a scoping workshop before beginning an evaluation. The study should, of course, remain the responsibility of the DPS, but surely both the DPS's efforts and the Board's decisions will be better served by the early receipt of public comment on the EEU and its programs.

83. MOU, ¶¶ 15-16, 54, 56, and 66.

84. *Id.*, ¶ 16.

> wide Programs contained in a Board order specific to a DU which signs this MOU.[85]

Lastly, the DUs are required to act in good faith to support the approval, establishment, funding, and implementation of the EEU.[86]

The distribution utilities will willingly give up a part of their business.[87] In return, they will no longer face particular regulatory uncertainties. They will have no direct control over the EEU, CA, or FA. They have agreed to support EEU activities. The only potential problem that comes to mind is a variation on the one that led to the creation of the Account Correcting for Efficiency ("ACE") over ten years ago, namely, the reluctance of a firm to take actions that will reduce sales and, thereby, profits. Conceivably, DUs (particularly those that still retain entitlements to generation) might resist efforts to reduce their customers' electricity usage, but, in light of their promise not to do so and given other changes to the electric sector that may soon be upon us,[88] I conclude that the DUs' inherent ambivalence to DSM (if any at all) will not jeopardize the workings of the new system.

iv. Conclusion: Conflicts of Interest

The settlement provides an innovative structure that sets out clear lines of authority and responsibility for all the players, and also provides for the important public participation that can only strengthen its prospects for success. The structure provides ample opportunity for public scrutiny and redress should conflicts, or appearances thereof, arise.

d. Conclusion: Effectiveness of the Institutional Structure

Out of intensive negotiations emerged the MOU and the institutional structure that it proposes. That structure differs from the one outlined by the Board in the Phase I Order. The

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85. *Id.*, ¶ 53.

86. *Id.*, ¶ 66.

87. *Id.*, ¶ 61. Not all will give up all aspects of providing DSM services. BED and WEC, for instance, will continue to deliver programs in their service territories, including those that would otherwise be delivered by the EEU. Nor, in the case of Citizens, will approval of the MOU resolve all outstanding claims with respect to DSM. See Section II.D.2., above, and the bilateral agreements for more detail.

88. See Docket 5854, Order of 12/30/96.

Board considered how the efficiency entity's own management could be constituted to relieve potential conflicts and conflicts of interest. The Board suggested that:

> In order to ensure that a broad range of expertise and interests is represented, the management committee might well be structured in the following manner: two utility representatives with experience in energy efficiency programs; a DPS representative; a business energy efficiency specialist; a residential energy efficiency specialist; and a low-income advocate energy specialist. The management committee should have the authority to appoint an executive director, to issue requests for proposals, and to select contractors to implement specific energy efficiency programs. The management committee should also recommend new programs and annual budgets for Board review and approval.[89]

It was a suggestion merely, and the Board invited the parties to make other recommendations as they saw fit.

The settlement offers an alternative that does not require that possibly conflicting parties sit together on a board of directors or management committee. Instead, it sets up a process by which all parties will have an opportunity, first, to participate in the drafting of the contracts between the Board and the EEU, CA, and FA, next, to bring complaints to the Board about the EEU's performance, and, third, to review and comment on periodic evaluations of the EEU and its programs. One of the appeals of the parties' proposal is that it assures that debates about the EEU's performance will be public, not merely closed-door affairs among its managers. That said, the MOU makes no prescriptions about the make-up of the management or directors of the EEU itself. Bidders for the contract may find it advantageous to propose a management structure that represents various interests. Certainly the Board, in its request for bids, should ask the respondents to address this question.

Lastly, the settlement has the support of a large and diverse group of interested and thoughtful parties. That fact by itself offers significant assurance that the proposed institutional structure offers a solid foundation for this new innovative program.

For all these reasons, I conclude that the institutional structure envisioned by the settlement is not only workable but in fact is well constructed to support the objectives for which it was framed. I therefore recommend that the Board approve it.

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89. Phase I Order at 53-54.

F. The Funding Plan

1. General

Under the MOU, the system-wide program activities of the EEU shall occur within a Board-approved budget, with annual re-allocations among programs as described below.[90] The annual budgets (as originally filed and as revised) are the following:[91]

Year	MOU Budget	Revised Budget
2000	$8,490,128	$8,256,632
2001	11,157,722	10,240,568
2002	13,519,809	12,323,531
2003 (est.)	15,945,344	15,945,344
2004 (est.)	16,548,503	16,548,503

Attachment B to the MOU describes the initial plan for allocating the program budgets. These budgets will fund the EEU program costs, the EEU's administrative costs, and the costs incurred by the Contract Administrator and Fiscal Agent. This budget allocation plan describes the actual allocation for 2000, but allows changes in subsequent years. The MOU also establishes a public process for amending annually the allocation of the budgets among programs but states clearly that the budget totals shall not change.[92] The two following tables recapitulate the funding allocations for the first EEU program year, 2000. The first shows subtotals by program and the second shows them by type of expenditure.

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90. MOU, ¶ 46. The parties agreed that at no time during the first five years of the program should the DU contributions to the EEU for the core programs exceed the equivalent of $0.0029/kWh on total statewide retail sales. "System-wide programs" is defined in the MOU to mean "all DSM programs, including but not limited to the Core Programs, except for those programs offered or required to be offered by a DU as a result of [distributed utility planning]". *Id.*, ¶ 1.

91. Exhibit DPS-MOU-1 at ¶ 17 and Attachment B; the 22 utility bilaterals; DPS Letter, 8/30/99. Note also that the figures for WEC include the $155,000/year, for the first three years, that it will allocate to its own programs. Refer to Section II.D.2.f., above.

92. MOU, ¶ 19 and Attachment B. These figures are as originally filed. The parties have not yet informed the Board how they will change in relation to the revised totals.

Program Category	Year 2000	
	Components	Totals
Commercial and Industrial Programs		
Market Opportunities Program		
Measure-Related Program Costs	$981,432	
Non-Measure Program Costs	$559,443	
Subtotal Program Costs		$1,540,875
Commercial and Industrial New Construction		
Measure-Related Program Costs	$501,447	
Non-Measure Program Costs	$566,307	
Subtotal Program Costs		$1,067,754
Dairy Farm		
Measure-Related Program Costs	$257,067	
Non-Measure Program Costs	$162,754	
Subtotal Program Costs		$419,822
C&I Emerging Markets Program		$50,000
Total Commercial & Industrial		$3,078,451
Residential Programs		
Residential New Construction		
Measure-Related Program Costs	$357,799	
Non-Measure Program Costs	$589,546	
Subtotal Program Costs		$947,345
Low-Income		
Measure-Related Program Costs	$870,000	
Non-Measure Program Costs	$983,000	
Subtotal Program Costs		$1,853,000
Efficient Products		
Measure-Related Program Costs	$625,374	
Non-Measure Program Costs	$760,002	
Subtotal Program Costs		$1,385,376
Residential Emerging Markets Program		$50,000
Total Residential Program Costs		$4,235,721
Efficiency Utility, Fiscal Agent, & Contract Manager Non-Program Budget		$1,175,956
Grand Total of All Program Costs		**$8,490,128**

Type of Expenditure	Year 2000	
	Components	Totals
Commercial and Industrial Programs		
Measure-Related Program Costs	$1,739,947	
Non-Measure Program Costs	$1,288,504	
Subtotal Program Costs		$3,028,451
C&I Emerging Markets Program		$50,000
Total Commercial & Industrial		$3,078,451
Residential Programs		
Measure-Related Program Costs	$1,853,174	
Non-Measure Program Costs	$2,332,548	
Subtotal Program Costs		$4,185,721
Residential Emerging Markets Program		$50,000
Total Residential Program Costs		$4,235,721
Efficiency Utility, Fiscal Agent, & Contract Manager Non-Program Budget		$1,175,956
Grand Total of All Program Costs		**$8,490,128**

Attachment B provides similar detail for subsequent years; these, however, will be subject to reconsideration according to the budget allocation process.[93]

The total each DU must collect from its customers for the EEU program is set forth in each bilateral agreement. The bilateral agreements offer DU resource commitments for the first three years, 2000, 2001, and 2002. The MOU establishes a process for deciding the actual budgets for years 2003 and 2004. In 2002, the DPS will carry out an evaluation (the scope of which is only broadly described in the MOU) of the performance of the EEU, the remaining economically achievable energy efficiency potential, and the continuing need for EEU programs to achieve such potential. The settlement calls on the Board to offer parties to this docket the opportunity to comment on the report and then, in light of those comments, to act on the recommended budgets for 2003 and 2004.[94]

93. *Id.*
94. *Id.*, ¶ 18.

The MOU provides that this EEU program budget will be funded through a separately stated, non-bypassable, volumetric system benefits charge on the bill from the electric utility to customers, as authorized under newly enacted 30 V.S.A. § 209(d)(3). The MOU provides that rate design for the benefits charge will be set by the Board. In its 2002 evaluation report, the DPS may make recommendations about whether to eventually create a uniform state-wide charge.[95]

I conclude that the proposed funding and collection mechanism for the new DSM delivery system is consistent with 30 V.S.A. § 209(d)(3), and that the specific yearly budgets each satisfy the requirements of 30 V.S.A. § 209(d)(4).[96] DSM services will in the future be delivered on a "pay-as-you-go" basis, instead of by investment and amortization, but this should not affect the quality or comprehensiveness of measures and programs.

The following table breaks down the total annual budgets for the first three years, by utility:[97]

Statewide Program Budget Commitments			
	Year		
	2000	2001	2002
TotalBudgets	**$8,256,631**	**$10,240,568**	**$12,478,531**
Municipal Utilities			
Barton	$29,276	$36,961	$43,304
Enosburg Falls	$37,283	$47,070	$55,147
Hardwick	$60,887	$76,870	$90,061
Hyde Park	$20,410	$25,768	$30,190
Jacksonville	$11,264	$14,221	$16,661
Johnson	$34,316	$43,324	$50,758
Ludlow	$89,318	$112,764	$132,115
Lyndonville	$127,238	$160,638	$188,203
Morrisville	$83,477	$105,390	$123,475
Northfield	$50,014	$63,143	$73,978
Orleans	$34,957	$44,133	$51,706

95. *Id.*, ¶ 21, 47.

96. See Section III.A., below, which takes up the legal requirements in greater detail.

97. The 22 utility bilaterals. These match the revised figures filed by the DPS on August 30, 1999. The figures may not add up precisely, because of rounding. Also, these amounts include the costs associated with WEC's self-implementation of programs.

Readsboro	$4,673	$5,900	$6,912
Stowe	$115,652	$146,011	$171,067
Swanton	$106,949	$135,023	$158,193
Burlington	$410,000		
Other Utilities			
Rochester	$12,890	$16,273	$19,066
Central Vermont	$3,548,757	$4,628,213	$5,535,267
Green Mountain	$2,461,512	$3,303,572	$4,248,473
Citizens Utilities	$557,736	$704,142	$824,972
Vermont Electric Coop	$273,238	$344,963	$404,158
Vermont Marble	$16,784	$21,189	$24,825
Washington Electric Co-op	$170,000	$205,000	$230,000

2. Impact of the EEU Funding Plan on Consumer Bills and Rates

These statewide programs affect consumer bills in two ways. First, the program costs will be recovered in the rates consumers pay for their electricity. Second, participating in these energy efficiency programs offers consumers the opportunity to reduce their electricity usage while still getting the often essential benefits they seek from electricity service.[98]

The MOU and associated bilateral agreements with individual electric utilities aim to minimize increases in overall electricity rates. The MOU specifically states, "The Parties agree that the budgets set out in Attachment B were developed to strike a balance between an appropriate ramp-up of EEU funding and the avoidance of significant rate impacts."[99] In providing for a benefits charge to collect funds from consumers for this new EEU program, the MOU provides that current rates of each DU will be reduced to reflect as much as possible the extent to which DSM costs in current rates will be displaced by such a benefits charge. Any such reduction is to be made: (a) in a rate proceeding concerning the electric utility which is currently pending before the Board; (b) through a rate reduction which the electric utility shall file with the Board, pursuant to 30 V.S.A. § 225(a), to take effect as discussed immediately below; or (c) through a petition filed with the Board by the DPS. The effective date of any such

98. See Section II.C. 8., above, for details on expected savings.
99. MOU, ¶ 21.

reduction in the rates of an electric utility is to be the same as the first date on which the benefits charge goes into effect. Should a subsequent year's allocation to an electric utility of the EEU budget require a reduction in the rates of the electric utility, then the effective date of such reduction is to be the same as the first date on which the subsequent year's allocation goes into effect. The Core MOU and associated bilateral agreements between the DPS and all of the municipal utilities except BED also contain additional specific provisions governing rate reductions by those municipal utilities.[100]

The MOU provides that, within each DU service territory, the cost recovery for this EEU program will be allocated, to the greatest extent possible, among customer classes in the same manner and using the same methodology as other comparable costs are allocated under the DU's approved rate design, as may be amended with Board approval from time to time.[101]

Overall the settlement plan generally holds spending on statewide energy efficiency programs relatively constant.[102] For customers in some service territories there will be no overall rate impacts, but for others there will be: efforts were made in the negotiations to keep any rate increases very small.[103] For example, the rate impacts for GMP and CVPS customers are set by the terms of the bilateral agreements for the first three program years, the years for which budgets have been established. CVPS customers will see an overall increase of no more than 0.25 percent during this period; and GMP customers will experience no rate impacts in the first two program years.[104]

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100. *Id.*, ¶¶ 22-23; exhs. DPS-MOU-4, 6 through 15, 17-18; Barton Bilateral. During a status conference on August 25, 1999, counsel for the Department argued that, as general matter, the EEU-benefits charge need not be considered in individual rate cases for all of the utilities, pursuant to the requirements of 30 V.S.A. §§ 218, 225-227; rather, it can be implemented through a generic proceeding, pursuant to 30 V.S.A. § 209(d)(3) and (4). I concur: the new statute expressly provides that, "*[i]n addition to its existing authority*, the board may establish by order or rule a volumetric charge to customers for the support of" the EEU programs. 30 V.S.A. § 209(d)(3). Thus, setting rates for the EEU is distinct from setting rates for utilities. Any utility rate decreases to offset the EEU charge must, of course, occur in accordance with applicable law. 30 V.S.A. § 225(a).

101. MOU, ¶ 48.

102. Tr. 6/29/99 at 148-149 (Parker).

103. *Id.* at 149-150, 154-156.

104. CVPS Bilateral; GMP Bilateral.

3. Equity

From the outset of the Board's efforts to ensure that Vermont utilities identified and took steps to capture the benefits of energy efficiency for the economy and environment, the Board has sought to ensure that all consumers have access to these benefits. The Board has also sought to ensure that all the consumers who contribute to the cost of utility energy efficiency programs also have the opportunity to obtain the bill-reducing benefits of participating in the programs. In the recently enacted statute, the Legislature also addresses the equity issue, stating that the Board is to "ensure that all retail consumers, regardless of retail electricity or gas provider, will have the opportunity to participate in and benefit from a comprehensive set of cost-effective energy efficiency programs and initiatives designed to overcome barriers to participation."[105]

The MOU articulates principles to guide the work of the EEU in this regard. Paragraph 45 of the MOU sets the following objective for the administration of the EEU programs:

> Over time, the System-wide Programs offered by the EEU should generally reflect a level of expenditure that corresponds to electric energy use by geographic region and customer class throughout the state. In this regard, the design of the System-wide Programs and the budgets for those Programs should generally seek to provide a level of service to customer classes and regions of the state that corresponds to their share of the eligible energy efficiency potential and their contribution to DSM expenditures.[106]

The MOU also notes that the resource commitment embodied in each utility's budget for the first three program years set forth in each bilateral agreement has been determined on a company-specific basis, based in part on a reasonable estimate of the eligible markets for the core programs in each service territory.[107] Although the MOU does not explicitly say so, I assume that its intent is that the benefits charge supporting the EEU should be the same for all customers in a particular service territory.

The MOU's budget allocation process also provides that, in response to an EEU reallocation request, a utility may contest whether the EEU has made sufficient efforts, over

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105. 30 V.S.A. § 209(e)(1).
106. MOU, ¶ 45.
107. *Id.*, ¶ 47.

time, to deploy measures to customers and customer classes in that utility's service territory, in a manner consistent with the MOU's distributional equity principle.[108]

The C&I Customer Credit Program, anticipated in the MOU and detailed in the IBM Bilateral, addresses the needs of customers who, for one reason or another, have chosen not to participate in utility energy efficiency service programs. It offers C&I customers the opportunity to obtain funding support from EEU resources for qualifying energy efficiency initiatives they take themselves.[109]

I conclude that, taken all-in-all, the settlement can achieve a reasonable level of distributional equity in the delivery of efficiency services among Vermont's customers — indeed, a greater equity than the current multi-utility program has given us, because of the variations in programs and program designs across the many service territories. In addition, the core programs are in large part focused on lost opportunities, whose occurrences spring up throughout the state, constantly and steadily, unaffected by geography and the degree of earlier DSM efforts.[110]

4. Long-Term Funding

The MOU provides budgets for the statewide EEU programs for the next five years, from calendar year 2000 through 2004.[111] The bilateral agreements commit each utility to budgets only for the first three years: 2000, 2001, and 2002.[112] The funding commitment for subsequent years is deferred, pending an assessment of what is appropriate in light of the initial three years' experience with the EEU's programs.[113]

The MOU directs the DPS to conduct an evaluation during the third year of the EEU program, calendar year 2002, addressing:

- The remaining, economically achievable, energy efficiency potential;

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108. *Id.*, ¶ 19.
109. *Id.*, ¶ 26. See Section II.D.2.i., above.
110. Tr. 6/29/99 at 142-143 (Parker).
111. MOU, ¶ 17 and Attachment B.
112. All DU Bilaterals.
113. MOU, ¶ 18.

- The performance of the EEU in achieving available efficiency potential, reducing barriers in energy efficiency markets, and meeting distributional equity objectives for core energy efficiency programs;
- The continued need to direct EEU resources toward energy efficiency markets; and
- Any other factors the DPS deems relevant.[114]

The DPS is to present a report based on this evaluation to the Board, with copies to all DUs, all parties on the service list for this docket, and any other person seeking intervention. The report will include recommendations for changes in budgets for calendar years 2003 and 2004 and may address other appropriate changes in the EEU program. The MOU calls on the Board to then offer interested parties the opportunity to submit comments and request a technical workshop prior to acting on the DPS report.[115]

This process will provide the Board with valuable information upon which to gauge the progress of the EEU and to consider any needed changes in the EEU program as it (the Board) considers what resource commitments are appropriate for subsequent years. This aspect of the settlement offers the Board, DPS, EEU, and other interested parties a well-timed opportunity to evaluate the efficacy of the new program, to make "mid-course" corrections, and "fine-tune" the budgets and allocations. At that time, the Board can also consider the frequency with which such reviews (as distinct from the annual program reallocation process described in ¶ 19 of the MOU) should take place in the future.

5. Conclusion: Funding

The funding levels and process for budget adjustments that the parties propose are reasonable. I recommend that the Board approve them. I direct the parties to file, with their comments on this proposed decision, a table showing the revised allocations of funds among programs (the totals should match those given in the Department's August 30, 1999, filing).

114. *Id.*
115. *Id.*

G. ACE, Rate Regulation, and Other DU Cost Recovery Provisions

1. Account Correcting for Efficiency

The MOU provides that electric utilities that currently accrue monies under the rules for the Account Correcting for Efficiency ("ACE") shall be allowed to accrue and recover ACE on energy savings attributable to System-wide Programs delivered by the EEU for up to two calendar years after January 1, 2000, or until the electric utility receives a Board order with respect to replacing the ACE mechanism in a rate case, whichever is earlier. At the time of that rate case, the electric utility may present evidence and argument concerning: (a) the extent to which revenue erosion due to core program savings has or will have an effect on the electric utility's opportunity to earn its allowed return; (b) the appropriateness of establishing a rate-making method to ameliorate any such effect; and (c) a proposed rate-making method, other than ACE, to ameliorate any such effect.[116]

The Parties agree that, with the elimination of ACE, an examination as to whether any regulatory changes are needed that would "allow DUs the reasonable opportunity to earn their allowed return" is appropriate.[117] The parties commit to perform such an examination, and to develop and implement any needed changes, by January 1, 2001 (presumably with Board or Legislative approval). If agreement on a new mechanism cannot be reached, the matter will be taken up, as appropriate, in rate cases.[118]

This treatment of ACE is appropriate. ACE originally served to ensure that the electricity sales reductions associated with utility-sponsored energy efficiency programs did not undermine the utility's commitment to delivering the programs, by allowing it to recover *net* revenues lost through efficiency savings. It was intended to remove a utility's disincentive to manage its own costs, and therefore its customers', in the most efficient manner possible.[119] The parties propose here to allow utilities to continue for this limited time to accrue and recover ACE attributable to programs they carried out with the expectation that ACE would be provided. The Board will consider whether any reason remains to provide ACE for programs

116. *Id.*, ¶ 43.
117. *Id.*, ¶ 44.
118. *Id.*
119. Docket 5270, Order of 4/16/90 at Vol. III, 138-150, and Vol. IV, 18-28.

carried out by the EEU, though it appears now that its justification is much diminished.[120] The Board may then also consider adjustments in the treatment of ACE (or alternatives to it) for programs carried out by utilities, or by the EEU on behalf of the utilities, under the rules of distributed utility planning or for other purposes.

2. Rate Regulation and DU Cost Recovery Provisions

The settlement specifically addresses the recovery of certain costs incurred by utilities. First, the MOU provides that the establishment, funding, and support of the EEU, if approved by the Board,

> shall be considered to resolve all claims based on actions or failures to act prior to January 1, 2000, that a DU which signs this MOU failed to satisfy its DSM obligations to customers under 30 V.S.A. §§ 218c, 218b; the Board's orders in Docket Nos. 5270 or 5330; or any requirements to plan for and conduct System-wide Programs contained in a Board order specific to a DU which signs this MOU. This resolution shall include any claims accruing prior to January 1, 2000, founded upon such obligations, including but not limited to claims of imprudence or non-used and usefulness based upon failure to satisfy such obligations.[121]

The scope of this general provision is defined further in paragraphs 54, 55, 56, and 57 of the MOU. In addition, bilateral agreements with several DUs set cost recovery terms that are unique to those DUs; I have summarized those terms in Section II.D., above.[122]

The MOU specifically considered the prospect of the then pending legislation (S.137), which would enable the Board to establish a separately stated systems benefit charge to fund this EEU program. The MOU supports funding the EEU budget through a separately stated, non-bypassable, volumetric system benefits charge on the bill from DU customers. This provision also establishes that the amount of such a system benefits charge will be determined

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120. My personal belief is that, since ACE was designed to align a utility's profit (or, at least, financial viability) incentives with the public interest (which here encompassed improvements in economic efficiency and environmental protection), it will neither be appropriate nor necessary to continue allowing utilities to collect it if they are not making efficiency investments themselves. If, in the future (and as always), a utility suffers revenue reductions (because of EEU activities or for any reason), it will be free to petition the Board for rate relief.

121. MOU, ¶ 53.

122. See also the relevant Appendices to this Order.

separately for each DU, to yield the funding levels agreed on in the individual bilateral agreements.[123] This anticipates, therefore, that the system benefits charge must necessarily vary from utility to utility.

As I observed earlier, the settlement has attempted to achieve a balance between ramping up EEU funding and avoiding significant rate impacts. Achieving this has been served by offsetting the new system benefits charge with reductions in current rates to reflect the reductions in costs DUs will be incurring when statewide energy efficiency program responsibilities are transferred from the DUs to the EEU.[124] The MOU provides that, if the new law authorizes a separately-stated systems benefits charge, the effective date of any reduction in the rates for each DU shall be the same as the first date on which the benefits charge goes into effect.[125] With the authority granted to it under 30 V.S.A. § 209(d)(3), the Board can implement the terms of the MOU by establishing the new system benefits charge, to be balanced by offsetting rate reductions, where appropriate.

The settlement also provides a number of specific cost recovery provisions that the Board should expect to deal with in future utility rate proceedings. They address, among other things:

- *DU costs associated with the transition to the EEU*. Costs incurred by a DU for developing and implementing the transition plan will be eligible for recovery in the DU's next rate case subject to traditional rate-making principles and applicable DSM cost recovery mechanisms.[126]
- *DU costs associated with DUP-related DSM activities*. Accounting and rate-making for costs incurred by a DU in connection with DSM activities carried out for DUP purposes are to be performed under existing DSM rate-making rules and principles, including the ACE mechanism. Prudence, used-and-usefulness and other rate-making concepts will apply as defined in the April 16, 1990, Order in Docket 5270.[127]

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123. MOU, ¶¶ 20-21.
124. *Id.*, ¶ 22; see Section II.F.2., above.
125. MOU, ¶ 23.
126. *Id.*, ¶ 12 and Attachment A.
127. *Id.*, ¶ 33.

- *Distributed Utility Planning*. Distribution utilities will budget and pay for DUP planning and implementation.[128]
- *Dockets 5841/5859*. The MOU does *not* resolve any claims addressed, or arising out of, the Board's Order in Dockets 5841/5859.[129]
- *DU responsibility for DPS costs associated with this proceeding*. The MOU establishes the terms of DU commitments to pay costs incurred by the DPS for work associated with this docket and the transition to the EEU.[130]

The provisions for cost recovery contained in the MOU and bilaterals are reasonable and straightforward. If adopted by the Board, they will facilitate the transition to the new regime with as few financial impacts — on ratepayers as well as utilities — as possible. I recommend that the Board approve these provisions.

H. The Transition

The settlement provides a plan for an orderly transition from the current utility delivered energy efficiency program structure to the EEU. The MOU appends, as Attachment A, a transition planning framework document to guide the process. Under the terms of that document, a transition working group will be formed, chaired by the DPS and comprised of DPS staff (and contractors) and electric utility staff (and contractors). TWG work includes, but is not limited to, submission to the Board of a transition plan, a proposed request for proposal ("RFP") for the EEU (with suggested contract provisions), and proposed RFPs for the Contract Administrator and Fiscal Agent. The MOU calls for a public process for EEU selection, including a technical workshop held under the auspices of the Board.[131]

The Settlement MOU sets forth the agreed-upon goals of the transition process:

- To achieve an orderly and efficient transfer of program responsibilities from electric utilities to the EEU by a date certain;

128. *Id.*, ¶ 37.
129. *Id.*, ¶ 55. This refers to rate cases involving Citizens Utilities Company.
130. *Id.*, ¶¶ 62-65.
131. *Id.*, Attachment A.

- To preserve effective program delivery, infrastructure, and expertise related to programs and DUP;[132]
- To restrain any rate impacts of the transition that may, for some electric utilities, result from changing from past DSM-accounting and rate treatment methods to a "pay-as-we-go" approach; and
- To enable an EEU, as soon as possible, to effectively deliver and attain savings from the core programs and other system-wide programs as may be approved by the Board.[133]

Because timing is critical to the successful implementation of the MOU, the TWG commenced operations in advance of a Board order in this docket.[134] It has already developed the transition plan contemplated by the MOU; the "Energy Efficiency Utility Transition Plan" was filed on July 7th. The TWG has been developing the draft RFPs for the competitive selection of the Contract Administrator, the Fiscal Agent, and the EEU. On August 6, 1999, the DPS convened a public workshop to consider the scope and content of the RFP for the EEU. And at the August 25, 1999, status conference, the DPS announced plans to submit draft RFPs for the selection of the EEU, Contact Administrator, and Fiscal Agent in early September.

The MOU and the July 7, 1999 Transition Plan propose schedules that call for transition to the EEU by January 2000. These schedules were prepared before all the parties to the settlement had yet executed their commitments. Given the magnitude and complexity of the tasks that remain before the EEU will be operational, it seems obvious that the January 1, 2000, start date will not be met. During the August 25th status conference, I asked the parties how this probable delay will effect the settlement and the transition. The DPS (with the general concurrence of the other parties) stated that the implementation of the EEU could tolerate being put off until March 2000, but that further delay would likely disrupt an otherwise orderly transition. Accordingly, I urge the Board to proceed as quickly as possible to approve this settlement and to take the necessary steps to fully implement the terms of the MOU and bilateral agreements. See Section IV.,B.1., below, for scheduling recommendations.

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132. This was reiterated by many parties during the status conference of August 25th. The potential loss of qualified personnel counsels for expeditious approval of the settlement and selection of contractors.

133. MOU, ¶ 12 and Attachment A.

134. Parker pf. at 9; tr. 6/29/99 at 18-20 (Parker).

I. Distributed Utility Planning

The settlement calls on the Board to initiate a collaborative process to establish guidelines for distributed utility planning by Vermont DUs. One objective of DUP is to explore options for using DSM and distributed generation to reduce the cost of maintaining the reliability of power delivery, by avoiding or deferring transmission, distribution, and other network investments.[135]

The MOU provides that electric utilities must engage in least-cost transmission and distribution system planning and effectively implement such plans. Utility transmission and distribution planning activities will be conducted under DUP. The guidelines described in the Plan are to serve as a starting point for a collaborative process to develop rules and methods for DUP in Vermont. The collaborative will seek to provide to the Board recommendations on, among other things, guidelines for use in DUP activities by individual electric utilities, procedures for revising integrated resource plan ("IRP") filings to reflect the principles and practices of DUP, and externalities and risk adjustments (including methodologies) to be used in DUP. Electric utilities are expected to develop the necessary skills and capabilities to perform DUP, and coordinate their activities with the EEU.[136]

The parties request that, within 60 days of approval of the settlement, the Board open a proceeding under the auspices of which the DUP collaborative process will take place. The parties agree to complete this collaborative process within 120 days of the opening of that proceeding. At the end of the collaborative process, the parties will either recommend an agreed-upon proposal to the Board or file their own recommendations with the Board.[137]

The MOU goes into great detail about the conduct of distributed utility planning and the obligations of the parties. It is not necessary to do so again here.[138] I only note my strong belief in the principles of least-cost, integrated planning, and my support for a process that will concentrate those methods upon the transport components of the electric system. This is an emerging field. To help all parties develop appropriate DUP strategies, the parties have

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135. Chernick Phase I reb. pf. at 5, 10.
136. MOU, ¶¶ 28 and 30; refer also to the Plan (exh. DPS-1) at Chapter 8 and Appendix 5.
137. MOU, ¶ 31.
138. *Id.*, ¶¶ 32-42.

agreed to pursue a formalized consensus-building approach under a collaborative process. I recommend that the Board approve this initiative.

J. Avoided Costs, Environmental Costs, and Risk Mitigation

The MOU states that all decisions regarding DSM program design, measure selection, and measure installation shall be made based on the societal cost-effectiveness test as defined in Docket 5270.[139] This test, which includes adjustments for comparative risks and external costs, is to be used in screening all DSM measures and programs, including the core programs, and in DUP.[140] The MOU also states that, in applying the societal test to DSM programs and measures, statewide avoided costs as approved by the Board for energy, capacity, risk, losses, and externalities shall be used, except that in DUP planning and implementation, area-specific T&D avoided costs should be substituted for system-wide T&D avoided costs. By approving the MOU, the Board will be approving the statewide avoided costs proposed by the DPS in the Plan for use in system-wide programs.[141]

1. Statewide Avoided Costs

In the Plan, the Department presents avoided costs on a statewide basis.[142] In support of the program proposals embodied in the MOU, the DPS used the avoided costs that it developed for the Plan in 1997, inflated to dollars in the year 2000 and adjusted for externalities (as described in Section I.2., Environmental Costs, below).[143]

a. Avoided Generation Costs

Markets for electric power have evolved greatly during the past three decades. What was once a network of individual utilities, uncoordinated in their planning and dispatch, is now a highly integrated grid, managed by a single entity, the New England Independent System

139. Docket 5270, Orders of 4/16/90 and 6/6/90.
140. MOU, ¶ 49.
141. *Id.*, ¶ 50.
142. Exh. DPS-1, Chapter 4 and Appendix 4; Chernick Phase I pf. at 5.
143. Mosenthal supp. pf. at 4-5. The DPS used actual inflation rates through the first quarter of 1999 and an assumed annual rate of 2.0 percent for the remainder of 1999.

Operator, responsible for maintaining system reliability and facilitating market-based power transactions. As a consequence, avoided generation costs, which once were determined largely by each utility's resource needs, are now largely a function of market prices. As a general matter, it is reasonable to assume that avoided generation costs are uniform across the state, because the generation costs avoided by a reduction in load anywhere in Vermont will be determined by the New England regional power market. DSM frees up power for sale into the market or it avoids a purchase of power. Either way, the market price, or value, of the power is the same.[144] Similarly, that price is the same whether the power costs are avoided by a utility or by a marketer serving a direct access customer. Moreover, since the avoided generation costs are based primarily on the costs of new power plants, the costs of new utility-owned generation (if there is any) should be quite similar to the market price.[145]

The Plan's avoided generation costs reflect regional power market prices.[146] This is a sensible approach, and I recommend that the Board adopt it.

b. Avoided T&D Costs

In contrast to its treatment of avoided generation costs, the Plan uses statewide averages for avoided T&D costs.[147] This aggregation of investment and load data, across areas and over time, has been a standard practice of utilities for many years, and it arises from particular characteristics of T&D that differentiate it from generation:[148]

- T&D costs can vary geographically, but not necessarily on the scale of utility service territories.
- Some transmission investments (costs), particularly at the VELCO level and for transmission into the state, are essentially state-wide (*i.e.*, yield state-wide benefits).
- Using state-wide averages may provide more stable estimates of avoided T&D costs. Since T&D avoided costs are averaged over a wider territory, the resulting

144. Either the utility re-sells its excess supply at the market price or it avoids buying new supply at the market price. Tr. 1/22/98, Vol. 1 at 184-189.

145. Chernick Phase I pf. at 5-7.

146. *Id.*, at 13; exh. DPS-1 at 24-31 and Appendix 4-1.

147. Exh. DPS-1 at 31-32 and Appendix 4-2. These avoided T&D costs include estimates of line losses avoided by DSM.

148. Chernick Phase I pf. at 9-10; Chernick Phase I reb. pf. at 30.

figures are more likely to reflect the expected value of future investments than would the outputs of an analysis of any one utility's service territory.

- The state-wide average will tend to balance the over- and under-building that results from the inherently discrete nature of T&D investments and the inevitable variations between local-area demand forecasts and actual loads.
- Load growth in one utility's service territory may increase the possible need for investments by another utility, because of the interdependent nature of neighboring utility systems. Thus, it does not necessarily follow that the T&D costs caused by incremental load growth in an area are necessarily the costs that would be incurred to deploy facilities in that area. State-wide averaging will overcome these anomalies. [149]

Lastly, it is likely that the production and use of disaggregated T&D estimates — and the administration of the resulting efficiency programs — is not justified by the costs, at least for now.[150] For all these reasons, I recommend that the Board adopt the Plan's methods and calculations for avoided transmission and distribution costs, for the purposes of designing and testing the cost-effectiveness of system-wide efficiency programs.[151]

2. Environmental Costs

In the Phase I Order, the Board declined, for several reasons, to depart from the approach to accounting for the external environmental costs of electricity production that it adopted ten years ago in Docket 5270. The Board did note, however, that if other approaches were proposed in the context of utility settlements, it will review the reasonableness of those alternatives on a case-by-case basis.[152] In this docket, the parties do in fact propose a new method of externalities accounting for the limited purposes of the EEU program planning and evaluation.

The MOU proposes that an externalities adder of 0.7 cent/kWh replace the five-percent mark-up on avoided costs (set by the Board in Docket 5270) as a rebuttable presumption for system-wide programs only, provided that this new adder is non-precedential as to any other

149. Chernick Phase I pf. at 7-9; Chernick Phase I reb. pf. at 31; tr. 1/22/98, Vol. II at 5 (Chernick).

150. Chernick Phase I pf. at 11-12.

151. As noted in Section II.H., above, the parties have agreed to develop other area-specific T&D avoided costs for DUP purposes.

152. Phase I Order at 55.

matters, including but not limited to supply purchases and distributed utility planning (including DSM programs offered as a result of DUP).[153] The MOU also directs the DPS to develop externalities adders for fuel-consuming end-use efficiency measures;[154] these adders will be based on those originally contained in the Plan, and will be used only for the planning and implementation of system-wide programs. Until an approach to dealing with externalities for the purposes of DUP DSM is produced through the DUP collaborative process, each utility will use the five-percent externalities adder (for DUP DSM only) as set out in Docket 5270.[155]

A per-kWh cost for externalities has some advantages over the percentage adder called for in Docket 5270. A percentage adder can, in certain contexts, produce some counter-intuitive results. For example, if additional environmental controls on the marginal energy source raise its cost, actual external costs will decline, but the five-percent adder would increase as the costs of the generation source increase. Also, the five-percent adder does not reflect the fact that avoidable emissions may change over time relative to other avoidable costs.[156]

I recommend that the Board adopt this new method of accounting for the external environmental costs of electricity production and delivery, for the purposes of system-wide program planning. It is simple, reasonable, and methodologically sound. Also, it is consistent with the requirements of 30 V.S.A. § 209(e)(8), which authorizes the Board to approve programs that "reasonably reflect . . . environmental benefits." Avoiding the environmental impacts from power plants is one of the benefits of the proposed programs.

3. Risk Mitigation

In Docket 5270, the Board adopted a ten-percent adjustment (a reduction) to the cost of energy efficiency investments for planning purposes, to reflect the comparative benefits of

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153. MOU, ¶ 51.

154. These adders reflect the fact that some efficiency measures, such as replacing electric space- and water-heating devices with fossil-fuel-fired ones, have local environmental impacts and, therefore, the adders will offset, in some degree, the $0.007/kWh supply-side adder when such end-use measures are analyzed.

155. MOU, ¶ 51.

156. Chernick Phase I reb. pf. at 55.

DSM in mitigating certain supply risks facing utilities.[157] The Department used this adjustment in its screenings of the proposed core programs.[158] The MOU provides that this risk adjustment will continue to be used in assessing system-wide programs. The parties have agreed to seek consensus on the risk adjustment to be used in DUP as part of the collaborative process established by the MOU, with any disputes to be resolved by the Board.[159] This is reasonable, and I recommend its adoption by the Board.

III. CONCLUSIONS

A. Applicable Law

In the Phase I Order, the Board concluded that, under then current law, it was authorized to approve and implement a state-wide delivery mechanism for energy efficiency programs. On June 1, 1999, the Governor signed into law S.137, a bill that amended Sections 209 and 218c of Title 30. The new law confirmed the Board's authority to appoint "one or more entities" to deliver energy efficiency services in the state, enumerated criteria to be met before doing so, and set overall funding levels and rate design requirements. In addition, the new statute "shall apply to the pending proceeding in docket 5980 before the public service board and to any pending challenges to the board's jurisdiction to authorize and fund an entity, independent of the electric utilities, to deliver energy efficiency programs."[160] In the sections that follow, I examine the settlement in the context of the applicable law.

1. 30 V.S.A. § 209(d)(1): Efficiency Programs and Their Implementation

The new law amends 30 V.S.A. § 209(d). As amended, the first subsection, 30 V.S.A. § 209(d)(1), specifically provides that:

> The public service department, any entity appointed by the board under subdivision (2) of this subsection, all gas and electric utility companies, and the board upon its own motion, are encouraged to propose, develop, solicit and monitor energy efficiency and conservation programs and measures. Such

157. Docket 5270, Order of 4/16/90, Vol. IV at 9-12, Vol. III at 164; exh. DPS-1 at 34.
158. Tr. 2/2/98, Vol. I at 72 (Mosenthal).
159. MOU, ¶¶ 30, 50.
160. 1999 Vt. Laws No. 60, § 3.

> programs and measures, and their implementation, may be approved by the board if it determines they will be beneficial to the ratepayers of the companies after such notice and hearings as the board may require by order or by rule.

Based on the evidence in this docket, I conclude that the proposed core programs, implemented in accordance with the MOU and associated bilateral agreements, will be beneficial to the ratepayers of Vermont's electric utilities.

2. 30 V.S.A. § 209(d)(2): Appointment of an Independent Efficiency Entity

30 V.S.A. § 209(d)(2) authorizes the Board to appoint one or more independent entities to develop, implement, and monitor energy efficiency programs, including programs delivered in more than one service territory. Specifically, it states that:

> In place of utility-specific programs developed pursuant to section 218c of this title, the board may, after notice and opportunity for hearing, provide for the development, implementation, and monitoring of gas and electric energy efficiency and conservation programs and measures, including programs and measures delivered in multiple service territories, by one or more entities appointed by the board for these purposes. The board may specify that the implementation of these programs and measures satisfies a utility's corresponding obligations, in whole or in part, under section 218c of this title and under any prior orders of the board.

The overall settlement is consistent with the terms of this subsection. The settlement asks that the Board appoint an EEU pursuant to a competitive process. The EEU will perform the tasks assigned to it by the MOU, under contract with the Board. The EEU's on-going implementation of the core programs, and any other system-wide programs that the Board approves will satisfy utility DSM obligations, as specifically set out in the MOU and associated bilateral agreements. All these actions are authorized by the new law.

3. 30 V.S.A. § 209(e): Objectives

The General Assembly set out thirteen requirements that must inform the Board's discretion in appointing an entity to deliver energy efficiency programs. In the subsections that follow, I conclude that these criteria are met by the settlement.

a. 30 V.S.A. § 209(e)(1)

The Board shall "[e]nsure that all retail consumers, regardless of retail electricity or gas provider, will have an opportunity to participate in and benefit from a comprehensive set of cost-effective energy efficiency programs and initiatives designed to overcome barriers to participation."[161] I conclude that the core programs are designed to overcome market barriers to the acquisition of energy efficiency programs. The proposed programs are cost-effective, reasonably comprehensive with respect to the market segments which they address, and open to all retail electric utility customers regardless of provider.[162]

b. 30 V.S.A. § 209(e)(2)

The Board shall "[r]equire that continued or improved efficiencies be made in the production, delivery, and use of energy efficiency services."[163] As the record shows, one essential purpose of the core programs and the EEU proposal is to increase efficiency in the production, delivery, and use of energy efficiency services by reducing the number of core program implementation entities and by providing uniform programs throughout the state.

c. 30 V.S.A. § 209(e)(3)

The Board shall "[b]uild on the energy efficiency expertise and capabilities that have developed or may develop in the state."[164] The designs of the core programs reflect a decade's experience with DSM implementation in Vermont: in their general features they are similar to programs that have been in effect for a number of years, changed in particular ways to improve participation, increase the comprehensiveness of savings, and transform markets.[165] Also, by reversing the decline in energy efficiency activity in the state, the EEU proposal will maintain and build on the state's considerable expertise and capability. For example, the bilateral agreement between CVPS and the DPS specifically provides for a plan to assist potentially

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161. 30 V.S.A. § 209(e)(1).

162. The proposed core programs will target electric, not gas, efficiency savings. The MOU does not, however, restrict the EEU's activities only to the electric sector. As experience with the new regime develops, the Board should consider whether to expand the EEU's responsibilities.

163. 30 V.S.A. § 209(e)(2).

164. 30 V.S.A. § 209(e)(3).

165. Exh. DPS-1 (the Plan) at 1-11, 56-57, Appendix 1.

displaced utility employees as a means of preserving Vermont's energy efficiency infrastructure. The Transition Working Group process also calls for additional such actions.

d. 30 V.S.A. § 209(e)(4)

The Board shall "[p]romote program initiatives and market strategies that address the needs of persons or businesses facing the most significant barriers to participation."[166] The core programs meet this objective by focusing on lost opportunity markets, which typically contain the most severe market barriers to energy efficiency, and by providing retrofit services to low-income and farm customers.

e. 30 V.S.A. § 209(e)(5)

The Board shall "[p]romote coordinated program delivery, including coordination with low income weatherization programs, other efficiency programs, and utility programs."[167] A central purpose of the EEU proposal is to promote coordinated program delivery statewide. Also, the MOU requires the EEU to coordinate with regional and national energy efficiency efforts. In addition, the residential low-income program includes coordination with the state weatherization program; and the MOU provides that the EEU may provide, on a fee-for-service basis, apart from its system-wide program activities, assistance in utility DUP efforts.

f. 30 V.S.A. § 209(e)(6)

The Board shall "[c]onsider innovative approaches to delivering energy efficiency, including strategies to encourage third party financing and customer contributions to the cost of efficiency measures."[168] The state-wide core programs and the EEU proposal clearly constitute innovative approaches to delivering energy efficiency in Vermont. Also, the MOU requires that the EEU refine the core program designs, as appropriate, in furtherance of several objectives, including but not limited to maximizing and facilitating customer contributions to measure costs and promoting other, creative approaches to energy efficiency.

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166. 30 V.S.A. § 209(e)(4).
167. 30 V.S.A. § 209(e)(5).
168. 30 V.S.A. § 209(e)(6).

g. 30 V.S.A. § 209(e)(7)

The Board shall "[p]rovide a reasonably stable multi-year budget and planning cycle and promote program improvement, program stability, and maturation of programs and delivery resources."[169] The settlement meets this objective by providing for a five-year budget path, with a gradual "ramp-up" of the EEU budget. The MOU also provides that, during the third year of operation, the Department will prepare an evaluation of the EEU, which is to inform potential revisions to the fourth and fifth year budgets.

h. 30 V.S.A. § 209(e)(8)

The Board shall "[a]pprove programs, measures, and delivery mechanisms that reasonably reflect current and projected market conditions, technological options, and environmental benefits."[170] The proposed EEU program is based on an analysis which reasonably estimates current and projected, economically-achievable, energy efficiency potential for the markets to be served by the core programs. Using reasonable estimates of current and projected avoided costs (stipulated to by parties for this purpose), the core programs show a high likelihood of being cost-effective. The stipulated avoided costs were adjusted for the expected environmental benefits of avoiding additional electric generation.

i. 30 V.S.A. § 209(e)(9)

The Board shall "[p]rovide for delivery of these programs as rapidly as possible, taking into consideration the need for these services, and cost-effective delivery mechanisms."[171] The MOU provides for implementation early in 2000 and creates a process to speed the transit from utility-sponsored DSM programs to the EEU-implemented core programs.

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169. 30 V.S.A. § 209(e)(7).
170. 30 V.S.A. § 209(e)(8).
171. 30 V.S.A. § 209(e)(9).

j. 30 V.S.A. § 209(e)(10)

The Board shall "[p]rovide for the independent evaluation of programs delivered under subsection (d) of this section."[172] The MOU proposes that the Department will bear on-going evaluation responsibilities for the core programs and that, during 2002, the Department will also prepare an evaluation of, and report on, both the core programs and EEU generally. The Department will be guided in performing these duties by relevant Board orders and statutes. The DPS's fundamental mission — to be a responsible and competent advocate for the public — remains a potent incentive for it to perform an objective, balanced evaluation of the EEU program. I am confident that the Department's ongoing evaluations and year 2002 report will be sufficient to satisfy this statutory objective, but if, for any reason the Board deems otherwise, it (the Board) can readily commission its own evaluation of the overall program.

k. 30 V.S.A. § 209(e)(11)

The Board shall "[r]equire that any entity approved by the board under subsection (d) of this section deliver board-approved programs in an effective, efficient, timely, and competent manner and meet standards that are consistent with those in section 218c of this title, the board's orders in public service board docket 5270, and any relevant board orders in subsequent energy efficiency proceedings."[173] As the evidence demonstrates, the EEU proposal under consideration in this docket meets this condition.

l. 30 V.S.A. § 209(e)(12)

The Board shall "[r]equire verification, on or before January 1, 2003, and every three years thereafter, by an independent auditor of the reported energy and capacity savings and cost-effectiveness of programs delivered by any entity appointed by the board to deliver energy efficiency programs under subdivision (d)(2) of this section."[174] The MOU provides for evaluations to be performed at regular intervals, and for a comprehensive evaluation of the

172. 30 V.S.A. § 209(e)(10).
173. 30 V.S.A. § 209(e)(11).
174. 30 V.S.A. § 209(e)(12).

programs and EEU itself to be conducted in 2002. Thereafter, evaluations will be a matter of Board compliance with this subsection of the statute.

m. 30 V.S.A. § 209(e)(13)

The Board shall "[e]nsure that any energy efficiency program approved by the board shall be reasonable and cost-effective."[175] The record demonstrates that the proposed programs are reasonable and likely to be cost-effective.

B. Conclusion and Recommendations

Based on the evidence and testimony before me, I recommend that the Board approve the Memorandum of Understanding, its Attachments (as revised), and the twenty-three Bilateral Agreements entered into by the central parties to this docket. No party opposes the settlement.

1. Scheduling

Further action required of the Board to develop the request for proposals, award and negotiate contracts, and establish the benefits charge to fund the new programs can be taken up in either a third phase of this docket or in a separate docket opened for those purposes. Certain milestones set in the schedule originally proposed by the parties in the MOU have already passed unachieved, due in part to the complicated and time-consuming nature of the bilateral negotiations. As previously noted, the consequences of delay were discussed during the August 25th status conference. What follows here are recommended changes to the proposed schedule, whose aim is to get the EEU up and running not by January 1, 2000, but certainly within the first quarter of the new year.

175. 30 V.S.A. § 209(e)(13).

Potential Timeline for EEU Implementation			
		Parties'	**Board Staff**
		Proposed	**Possible**
	Task	**Dates**	**Revised Dates**
	PSB Order on MOU	8/31/99	9/30/99
Task 1:	**Hire EEU Contractor**		
	Board Review of EEU RFP	9/1/99-9/14/99	9/30/99-10/29/99
	EEU RFP Issued	9/15/99	10/29/99
	EEU bidders' conference	na	11/2/99
	EEU Bids Due	10/20/99	11/23/99
	Oral presentations by EEU Bidders to PSB (workshop format)	10/21/99-11/10/99	12/3/99
	Hearing Officer issues PFD on EEU Contractor	11/11/99-11/24/99	12/31/99
	PSB issues final decision on EEU Contractor	11/24/99	1/31/00
	Final contract agreement negotiations	11/25/99-12/15/99	1/31/00-2/15/00
	TWG completes all tasks required for transition	12/16/99-1/7/00	na
	Attorney General approves contract with EEU Contractor	na	2/15/00-2/28/00
	EU operational transition begins	1/7/00	3/1/00
Task 2:	**Hire Fiscal Agent Contractor**		
	Issue RFP for Fiscal Agent	na	11/1/99
	Fiscal Agent bids due	9/14/99	11/19/99
	Award Fiscal Agent contract	9/28/99	12/10/99
	Fiscal Agent begins service	na	1/1/00
Task 3:	**Hire Contract Administrator Contractor**		
	Issue RFP for Contract Administrator	na	10/1/99
	Contract Administrator bids due	9/14/99	10/22/99
	Award Contract Administrator contract	9/28/99	11/12/99
	Contract Administrator begins service	na	12/1/99
Task 4:	**Implement tariff changes for all utilities**		
	Generic proceeding to make tariff changes	na	9/30/99-12/15/99
	Customers notified of tariff changes	na	12/15/99-12/31/99
	Tariff changes reflected in bilateral agreements go into effect	1/1/00	1/1/00

Based on the evidence in the record and the testimony presented at the hearing, I hereby report the above findings to the Board in accordance with 30 V.S.A. Section 8.

The proposal for decision has been served on all parties to this proceeding in accordance with 3 V.S.A. Section 811.

Dated at Montpelier, Vermont, this _____ day of _____, 1999.

_____
Frederick W. Weston, III
Hearing Officer

IV. ORDER

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

1. The findings and conclusions of the Hearing Officer are adopted.

2. The Memorandum of Understanding, its Attachments (as revised), and the twenty-three Bilateral Agreements (all appended to this Order) are approved.

3. The core programs described in the Department's report, *The Power to Save: A Plan to Transform Vermont's Energy-Efficiency Markets*, are approved.

4. An investigation into distributed utility planning shall be opened in a separate docket.

Dated at Montpelier, Vermont, this _____ day of _____, 1999.

_____)	
)	PUBLIC SERVICE
)	
_____)	BOARD
)	
)	OF VERMONT
_____)	

OFFICE OF THE CLERK

FILED:

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.

APPENDICES

Appendix A. Exhibit DPS-MOU-1: The Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

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

1. In this document, the following definitions will apply:
   a. "ACE" means "Account Correcting for Efficiency" as established by the Public Service Board's order in Docket No. 5270.
   b. "Board" or "PSB" means the Vermont Public Service Board.
   c. "Contract Administrator" means the contract administrator described in subparagraph 5.b, below.
   d. "Core Programs" means the seven statewide energy efficiency programs outlined in the Plan (the term "Plan" is defined below): Commercial and Industrial Market Opportunities Program, Commercial and Industrial New Construction Program, Dairy Farm Program, Residential New Construction Program, Low Income Program, Efficient Products Program, and the Emerging Markets Initiatives Program.
   e. "Court" means the Vermont Supreme Court.
   f. "DPS" or the "Department" means the Vermont Department of Public Service.
   g. "DSM" means demand-side management.
   h. "DU" means electric distribution utility.
   i. "DUP" means distributed utility planning.
   j. "EEU" means the energy efficiency utility described in subparagraph 5.c, below.
   k. "Fiscal Agent" means the fiscal agent described in subparagraph 5.a, below.

l. "IRP" means integrated resource plan.

m. "MCDU" means a municipal or cooperative electric distribution utility.

n. "MOU" means this Memorandum of Understanding among the Parties.

o. "Parties" means the Department and those entities on behalf of which a signature appears at the end of this document.

p. "Plan" means *The Power to Save: A Plan to Transform Vermont's Energy-Efficiency Markets* (May 23, 1997).

q. "State" means the State of Vermont.

r. "System-wide Programs" means all DSM programs, including but not limited to the Core Programs, except for those DSM programs offered or required to be offered by a DU as a result of DUP.

s. "T&D" means transmission and distribution.

t. "TWG" means the Transition Working Group described in the EEU Transition Planning Framework document which is Attachment A to this MOU.

<u>EEU and Core Programs: Approval and Structure</u>

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

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

4. In implementing the Core Program designs set out in the Plan, the EEU will: emphasize lost opportunity markets for all customer segments and retrofit markets for low income and dairy farm customers, stress market transformation strategies, coordinate with regional and national efficiency efforts, target under-served market

segments, seek to maximize and facilitate customer contribution to measure costs consistent with principles of sound program design, and promote development of innovative approaches to energy efficiency. The EEU will refine the designs set out in the Plan during the course of implementation, and may revise and modify them in consultation with the advisory committee(s) established pursuant to paragraph 5.d, below.

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

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

b. The Contract Administrator shall be the day-to-day manager of the Board's contract with the EEU.

i. The Contract Administrator is an administrative function which shall assist the Board with, and oversee, the details of managing the Board's contract with the EEU. The Contract Administrator shall be an agent of and report to the Board, and shall be independent of the EEU.

ii. A person or entity may make a written complaint concerning the EEU's performance under the terms of its contract with the Board to the Contract Administrator, who shall seek to resolve the complaint through negotiation involving the complainant and the EEU. If no such resolution occurs within

thirty (30) days of the filing of a written complaint, the Contract Administrator shall refer the complaint to the Board for review.

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

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

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

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

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

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

d. Advisory Committee(s) shall be entities through which substantive public and utility input on program design, annual re-allocation of funds within programs as provided for in paragraph 19, below, and other issues can be offered to the EEU. The Board shall appoint an advisory committee to the EEU which shall consist of representatives from DUs, consumers, the DPS, and others deemed necessary by the Board. Other advisory committees, including but not necessarily limited to advisory committees for specific programs or market segments, may be developed by the EEU which will select the members of such committees.

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

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

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

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

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

e. The EEU shall accept a proposal made by an MCDU in accordance with subparagraphs 6.a through 6.d, immediately above, if it is judged that the MCDU demonstrates the capability and commitment to implement the Core Program(s) identified in the proposal in an efficient, effective, timely, and competent manner. In the event the EEU does not accept an MCDU proposal made in accordance with this paragraph 6, the EEU shall state in writing the reasons why it found the MCDU's proposal unacceptable. Within ten (10) days of the EEU's rejection of the proposal, the MCDU may make a written complaint to the Contract Administrator, who shall seek to resolve the complaint through negotiation between the MCDU and the EEU. If no such resolution occurs within thirty (30) days of the filing of the written complaint, the Contract Administrator shall refer the complaint to the Board for review of the EEU's decision concerning the MCDU's proposal. If, upon review, the Board determines that the MCDU demonstrates the capability and commitment to implement one or more of the Core Program(s) identified in the proposal in an efficient, effective, timely and competent manner, the Board shall direct the EEU to accept the proposal for each program so demonstrated, with any modifications the Board may require.

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

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

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

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

9. The EEU shall make available customer-specific data, including but not necessarily limited to information regarding customer implementations, to the DU serving the relevant customer(s), if requested by the DU and subject to appropriate confidentiality protections against disclosure to unauthorized entities or personnel. Such information shall be limited to information necessary, and shall be used by a DU solely, for DUP and related load forecasting and DSM program planning and implementation, for determining and addressing whether the EEU's activities have been or will be consistent with the distributional equity principle set out in paragraph 45, below, and/or for ratemaking including ACE or any alternative mechanism or ratemaking strategy which may be approved by the Board. Such information shall not be used for marketing or promotion except directly as part of DUP-related load forecasting and DSM program planning and implementation, and shall not be used by a DU to obtain a competitive advantage over any other entity or person. Disclosures under this paragraph shall be

subject to appropriate safeguards and protections. In connection with the provision of information under this paragraph, each DU and the EEU shall provide reasonable notice and shall act in good faith to accommodate the reasons considerations of the EEU and the DU. The provisions of this paragraph shall apply to any System-wide Programs approved by the Board for EEU implementation.

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

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

<u>Transition to EEU</u>

12. The Parties agree to the transition planning framework document appended as Attachment A, which sets out a strategy and process to plan for and accomplish the transition to the EEU from current DU DSM efforts. The Parties agree that the goals of such transition shall be: (a) to preserve effective program delivery, infrastructure and

expertise related to Core Programs and DUP; (b) to restrain rate impacts of the transition caused for some DUs by changing from past DSM accounting and rate treatment to a pay-as-we-go approach; and (c) to enable an EEU which, as soon as possible, effectively delivers and attains savings from the Core Programs and other System-wide Programs as may be approved by the Board. The Parties shall work in good faith to accomplish these goals and an effective transition to the EEU. As part of this effort, each DU in coordination with the Department shall develop, within 60 days following approval of this MOU, a budget for the DU's costs that it anticipates it will have to incur in support of the transition to the EEU structure. Costs incurred by a DU which signs this MOU, with respect to the development and implementation of the transition plan as contemplated in Attachment A, shall be eligible for recovery in the DU's next rate case pursuant and subject to traditional ratemaking principles and applicable DSM cost recovery mechanisms.

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

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

14. The Parties agree in principle that the Board has the authority, pursuant to 30 V.S.A. §§ 218(b) and 225(a), to consider and approve, modify, or disapprove a request by a DU to

levy a charge on a participating customer's bill for the customer's contribution to the cost of measures installed under an energy efficiency program which the DU implements pursuant to 30 V.S.A. § 218(b).

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

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

<u>EEU Budget and Funding</u>

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

18. The budgets set out in Attachment B for calendar years 2003 and 2004 shall be subject to the following process: During calendar year 2002, the Department will conduct an evaluation of: (a) the economically achievable energy efficiency potential ("Potential") in the State, including but not necessarily limited to the Potential in the markets

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

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

DU may raise the issue of whether the EEU has made sufficient efforts, over time, to deploy measures to that DU's service territory and/or to particular customer classes within that territory in a manner consistent with paragraph 45, below.

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

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

22. In the event that the EEU is funded by a benefits charge as described in paragraph 21, above, the Parties agree that the current rates of each DU will be reduced to reflect as much as possible the extent to which DSM costs in current rates are displaced by such a benefits charge. Any such reduction shall be made: (a) in a rate proceeding concerning the DU which is currently pending before the Board; (b) through a rate reduction which the DU shall file with the Board, pursuant to 30 V.S.A. § 225(a),to take effect in accordance with paragraph 23, below; or (c) through a petition filed with the Board by

the DPS. Notwithstanding the foregoing, for each municipal DU except the City of Burlington Electric Department, the amount of such reduction shall be the greater of: (1) the amount of DSM costs in rates as approved in the municipal DU's most recent rate case or (2) the municipal DU's 1999 budgeted figure for DSM as provided by the municipal DU to the Department on March 8, 1999.

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

24. The Department believes the above-described benefits charge requires authorizing legislation, and the Department's agreement to paragraph 21 of this MOU is contingent on enactment of enabling legislation containing language concerning such a benefits charge similar to that included in S.137 presently pending before the Vermont General Assembly. If such enabling legislation is not in statute prior to January 1, 2000, then the Parties agree that an assessment on individual utilities shall be made in the same amount as would be placed, to fund the EEU, in the above-described benefits charge. A DU shall not be expected to pay the entirety of such assessment to the EEU on the first day of each calendar year but rather shall pay such assessment according to a reasonable schedule: (a) developed through the TWG process outlined in Attachment A; (b) agreed upon between the EEU and the DU; or (c) ordered by the Board. If a DU seeks to state such assessment as a separately identified charge on the bill, the DU may: request Board approval of such a separately identified charge in a rate proceeding concerning the DU which is currently pending before the Board; or (b) file a rate design tariff change with the Board pursuant to 30 V.S.A. § 225(a). In either event, the

Department agrees that the Board has authority to approve such a separately identified charge, to support the establishment of such a charge for a DU which requests such establishment and signs this MOU, and to work in good faith with each DU which signs this MOU to reach a mutually acceptable separately identified charge for such assessment. A DU's payment of the assessment described in this paragraph shall not be contingent on Board approval of a request by the DU for approval of a separately identified charge.

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

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

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

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

DUP

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

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

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

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

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

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

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

31. The Parties request that, within 60 days of approval of this settlement, the Board open a proceeding under which the above-described DUP collaborative process will occur. The Parties agree to complete this collaborative process within 120 days of the opening of such a proceeding. At the end of the collaborative process, either the Parties will recommend an agreed-upon proposal to the Board or, to the extent they have not

reached agreement, will file their own recommendations with the Board which will resolve any disputed issues after opportunity for hearing. In the event the collaborative process does not result in agreement concerning DUP guidelines, the Parties agree that the record in Docket 5980 may be incorporated in any proceeding opened pursuant to this paragraph. The Parties agree that such incorporation shall not be a basis for depriving any party of the opportunity to address any issue relevant to such proceeding.

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

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

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

35. A DU shall be required to ensure that DSM implementation undertaken as part of DUP is conducted in a manner that does not create lost opportunities, including but not limited to lost opportunities in the market segments targeted by the Core Programs, and appropriately inventories future potential savings. The Parties agree that DUP does not

require a DU to secure DSM savings beyond those that will enable it to fulfill the DU's DUP planning and implementation responsibilities.

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

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

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

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

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

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

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

ACE

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

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

Distributional Equity

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

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

47. Initially, in accordance with paragraphs 21 and 24, above, the allocation of the EEU budget and/or share of benefits charge has been determined for each DU on a company-specific basis, based in part on a reasonable estimate of eligible markets for the core programs in each service territory. As stated in paragraph 21, the design of a benefits charge to support the System-wide Programs to be implemented by the EEU is to be volumetric to the greatest extent possible consistent with traditional rate design principles, pursuant to a rate design approved by the Board. For customer classes with a

demand component, such a benefits charge may reflect both the energy and demand components of the bill, pursuant to a rate design approved by the Board.

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

Avoided Costs

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

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

51. The Parties agree that an externalities adder of 0.7 cent/kWh is adopted to replace the five percent adder as a rebuttable presumption for System-wide Programs only, provided that such replacement adder is non-precedential as to any other matters including but not limited to supply purchases and DUP (including DSM programs offered as a result of DUP). For planning and implementation of System-wide

Programs, the DPS shall develop externality adders to be used for fuel-consuming measures which are comparable and consistent with the end-use externality adders contained in the Plan modified to be comparable and consistent with the above-described replacement externalities adder. However, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described above, each DU will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

52. In accordance with paragraph 49, above, DSM measures and programs should all pass the societal test. The first priority of the EEU and its programs should be to identify and implement cost-effective electric energy DSM measures. The EEU is encouraged, however, to develop customer contribution strategies and other sources of funding that can be used to maximize the ability of programs to provide additional efficiency savings (e.g. fossil fuel, water, sewer, O&M) and other societal benefits as well.

General

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

54. Nothing in this MOU shall prevent the Department from investigating or challenging, on grounds other than failure to satisfy obligations to plan for and deliver System-wide

Programs, the existence or proper treatment of claimed DSM expenditures or related AFUDC or ACE amounts.

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

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

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

58. Certain DUs have filed appeals with the Court, pertaining to the Board's orders in this docket of January 19, 1999 and February 22, 1999, in order to preserve their rights with respect to the issue of whether the Board has jurisdiction to order and require funding of an EEU. By signing this MOU, each such DU acknowledges and agrees: (a) that the Board has jurisdiction to consider and approve this MOU notwithstanding the pendency of any such appeal; (b) following approval of this MOU by the Board, promptly to withdraw any such appeal; and (c) following Board approval of this MOU in its entirety, to take no action to challenge or provide assistance to any challenge of the Board's jurisdiction to order and require funding of an EEU.

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

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

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

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

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

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

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

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

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

68. The Parties have made specific compromises to reach this MOU. The Parties agree that should the Board fail to approve this MOU in its entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Attachments:

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

Attachment A

Energy Efficiency Utility ("EEU") Transition Planning Framework

Transition Goals and Scope

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

Transition Periods

Transition activities span three distinct periods:

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

Transition Principles

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

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

Transition Activities

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

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

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

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

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

Transition Timetable

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

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

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

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

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

Appendix B. Exhibit DPS-MOU-2: The CVPS-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND CENTRAL VERMONT PUBLIC SERVICE CORPORATION

This bilateral agreement entered into by and between Central Vermont Public Service Corporation ("CVPS" or the "Company") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding ("MOU") in this docket. Said MOU sets forth the agreement of the Department and CVPS, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including CVPS, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean CVPS and the Department.

CVPS and the Department supplement the MOU with the following agreements:

1. EEU Allocation. The allocation of the EEU budget to CVPS for the calendar years 2000, 2001 and 2002 shall be the following:

2000	2001	2002
$3,548,757	$4,628,213	$5,535,267

Nothing in this bilateral agreement or the MOU permits a change in this allocation, except such change as is permitted under paragraph 5, below, concerning the Year 2000 Deferral Opportunity. The Parties make no agreement regarding EEU allocations beyond calendar year 2002.

2. EEU Benefits Charge. In the event that prior to January 1, 2000, the Vermont statutes are amended to include language, similar to that in presently pending S.137, enabling the

Board to establish a separately stated systems benefits charge to fund energy efficiency programs, CVPS's EEU allocation shall be funded by such a charge. During calendar years 2000 through 2002, CVPS will reduce its approved rates by an amount equal to the benefits charge. However, so long as the sum of the benefits charge and CVPS's new rates does not exceed 100.25% of CVPS's previously approved rates, such reduction may be net of the sum of (a) recoverable amortizations of DSM costs and ACE amounts associated with CVPS's individual DSM programs implemented prior to January 1, 2000, and (b) the amount for EEU support set out in paragraph 8, 4, below. Nothing in this paragraph shall permit or require a change in CVPS's EEU allocation as agreed upon above. CVPS and the DPS will work to reach agreement on a rate design for the benefits charge in CVPS's service territory.

3. Unbundling. In connection with efforts to unbundle CVPS's EEU allocation, the DPS agrees to support CVPS's collection of its reasonable and prudent costs necessary to support the EEU as set out in paragraph 8, 4, below. Also in connection with such efforts, the Parties agree that CVPS's amortization of DSM expenses and ACE amounts associated with CVPS's individual DSM programs implemented prior to January 1, 2000, properly booked and deferred prior to the commencement of a proceeding to effect such unbundling, shall be resolved in the same manner and to the same extent as the MOU, in paragraphs 53, 54, and 56, resolves claims accruing prior to January 1, 2000 regarding compliance with obligations to plan for and conduct DSM programs arising under 30 V.S.A. §§ 218c, 218b, the Board's orders in Dockets No. 5270 or 5330, or a Board order specific to CVPS. CVPS shall amortize its booked and deferred DSM expenditures and ACE amounts incurred in 1998 beginning in 2000 and said amounts incurred in 1999 beginning in 2001, to the extent that such amortization does not cause the sum of the benefits charge and CVPS's new rates to exceed 100.25% of CVPS's previously approved rates. In accordance with its past accounting and ratemaking practice, the amortization of deferred DSM expenditures shall be over a term of 5 years and the amortization of ACE amounts shall be over a term of 2 years. This paragraph shall apply whether unbundling is performed in connection with the establishment of a benefits charge or as part of a

separately identified charge to reflect the Company's EEU assessment in accordance with paragraphs 20 through 25 of the MOU.

4. 1999 CVPS DSM Budgets. For 1999, the CVPS DSM budget shall be $4 million. This amount represents: (a) a $3 million budget to support the Company's DSM programs; and (b) a potential $1 million incentive for Mack Molding pursuant to its existing Economic Development Incentive Program ("EDIP") contracts. The DPS and CVPS agree that EDIP DSM commitments, such as that with Mack Molding, remain with CVPS and are not and will not be obligations of the EEU. CVPS will make any reductions in its 1999 program activities in a manner consistent with the transition goals and obligations contained in paragraph 12 of, and Attachment A to, the MOU. In accordance with and subject to paragraphs 53, 54, and 56 of the MOU, DPS agrees not to pursue any claim that CVPS's delivery of its DSM programs and services in 1999 at this revised budget amount does not comply with the Company's obligations to provide System-wide Programs under Condition 8 of the Docket No. 5330 Order, Docket Nos. 5270 *et. seq.*, and 30 V.S.A. § 218c. Subject to paragraph 54 of the MOU, DPS agrees to support CVPS's recovery of these costs in its next rate case. Since it will be necessary to begin the effort to amend the Company's 1999 DSM program spending immediately upon the execution of this settlement agreement, CVPS will consult with DPS on the specifics of what reductions will be made and how those reductions will be made, and the DPS agrees to support the Company's mutually acceptable reduction efforts in connection herewith in the next CVPS rate case and otherwise in the event that this settlement is ultimately rejected in this proceeding. To the extent that CVPS's 1999 DSM program spending exceeds the budget amounts agreed upon above, the Company shall be permitted to book, defer and recover, subject to paragraph 54 of the MOU, said amounts in accordance with traditional ratemaking principles and applicable DSM cost recovery mechanisms.

5. Year 2000 Deferral Opportunity. In the event that a benefits charge is not established to fund the EEU, CVPS shall have the right to defer up to $500,000 of its year 2000 EEU allocation. CVPS shall notify the EEU of its intent to exercise this right no later than April 1, 2000. Any such deferred amount shall be paid to the Fiscal Agent no later than

June 1, 2001 for the benefit of the EEU in addition to CVPS's allocation of EEU costs for 2001. However, on or before September 1, 2000, CVPS may notify the EEU and the Fiscal Agent that it intends to defer payment of the deferred amount to 2002, in which case CVPS shall pay such amount no later than June 1, 2002 to the Fiscal Agent for the benefit of the EEU in addition to CVPS's allocation of EEU costs for 2002. Beginning January 1, 2000 and running until such time as CVPS pays the deferred amount to the Fiscal Agent for the benefit of the EEU, interest on the deferred amount shall accrue at a rate of ¼ point above the rate of CVPS's short-term revolving credit facility, and CVPS shall pay the accrued interest to the Fiscal Agent at the time of payment of the deferred amount.

6. ACE. In the event that agreement between CVPS and DPS cannot be reached regarding a replacement strategy for the ACE mechanism, the DPS agrees to support CVPS's effort to implement a replacement strategy that is the same as the most favorable such replacement strategy approved by the Board and implemented in Vermont, subsequent to the Board's approval of the MOU, for any other electric utility company, subject to DPS review of the specific replacement strategy involved.

7. DUP Deferral. CVPS shall book and defer for future recovery at the time of its next rate case all of its costs associated with the development, planning, and implementation of its DUP efforts. For purposes of any rate unbundling necessary to reflect the EEU benefits charge, the Company's recurring DUP costs shall be assumed to be $0.

8. EEU Support. This paragraph concerns CVPS's recurring expenses to support the EEU such as the expense of coordinating with, or providing data to, the EEU. Such recurring expenses do not include CVPS's allocation of the EEU budget. The Parties shall project CVPS's recurring expenses to support the EEU to be $100,000 per year (unless another mutually agreeable projection is developed) for purposes of any rate unbundling necessary to reflect the customer EEU benefits charge. To the extent that CVPS's reasonable expenditures necessary to support the EEU exceed said sum, the Company shall be permitted to book, defer and recover, subject to paragraph 54 of the MOU, said

amounts in its next rate case in accordance with existing DSM cost recovery rules and procedures. The Parties agree that CVPS's opportunity to book, defer and recover such amounts is transitional and shall not extend beyond the Company's next rate case without the mutual consent of the Parties.

9. In the event that a benefits charge is not established to fund the EEU, CVPS may book, defer, and recover, subject to paragraph 54 of the MOU, the following: the amount in any calendar year by which the "future DSM costs" exceed the "existing DSM costs" as defined in this paragraph. For purposes of this paragraph, the "future DSM costs" include: the EEU allocation agreed upon in paragraph 1, 6, above; the EEU support expense amount contained in paragraph 8, 4, above; scheduled amortizations of DSM costs and ACE amounts associated with CVPS's individual DSM programs approved in CVPS's most recent rate case incurred through June 30, 1998; and scheduled amortizations of CVPS's booked and deferred DSM expenditures and ACE amounts incurred from July through December 1998 and in 1999 as agreed upon in paragraph 3, above. For purposes of this paragraph the "existing DSM costs" include: recurring DSM expenses as contained in CVPS's most recently approved rate case cost-of-service; and scheduled amortizations, approved by the Board, of DSM expenditures and ACE amounts incurred through June 30, 1998. To the extent that the "existing DSM costs" exceed the "future DSM costs," CVPS shall credit the appropriate deferral account. For purposes of this paragraph, the phrase "EEU support expense" shall exclude any recurring expenses which are approved by the Board in a general rate proceeding concerning the Company. For purposes of this paragraph, "scheduled amortizations" includes any return on associated unamortized balances.

10. <u>CVPS Employee Severance and Costs</u>. The DPS and CVPS shall work together, either jointly or with other DUs, to develop a plan to help provide information to potentially displaced utility employees concerning opportunities arising from the inception and activities of the EEU. Subject to review of the maximum potential severance costs which may be incurred, the Department agrees to support CVPS's booking, deferring and

recovery of its reasonable and prudent severance costs necessarily incurred as a result of job losses engendered by the establishment of the EEU.

11. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix C. Exhibit DPS-MOU-3: The CUC-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND CITIZENS UTILITIES COMPANY, INC.

The following document records the agreement between the Department of Public Service (the "Department") and Citizens Utilities Company, Inc. ("CUC") regarding the above-captioned proceedings.

1. Core MOU. CUC and the Department agree that this bilateral agreement incorporates the document which was filed with the Public Service Board on April 30, 1999 and is entitled Memorandum of Understanding and captioned as applying to the above-referenced proceedings ("MOU"). Said MOU sets forth the agreement of the Department and CUC, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including CUC, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). It is the purpose of this document to supplement the MOU and to record specific terms, provisions, and conditions with respect to CUC. Terms defined in the MOU shall have the same meaning when used herein, except that the term "Parties" in this bilateral agreement means the Department and CUC.

2. Funding. The Department and CUC agree that CUC shall fund the EEU budget in the following amounts for the first three years: for year 2000, $557,736; for year 2001, $704,142; and for year 2002, $824,972.

3. DUP.
   a. CUC agrees to change its proposal for implementing T&D least-cost planning, which was filed on October 15, 1998 in Dockets No. 5841/5859, to be consistent with the outcome of the process, described in paragraphs 30 and 31 of the MOU, for a

collaborative, and proceedings ensuing from that collaborative, before the Board concerning DUP. Nothing in this bilateral agreement is intended to alter or increase the requirements for compliance with item j of the terms of regulatory probation contained in the Board's order of September 15, 1998 in Dockets 5841/5859.

a. CUC may book and defer for future recovery in a rate case, as appropriate, all of its costs associated with DUP planning and implementation.

4. EEU Support Costs. With respect to recurring costs of CUC which may be necessary to support the EEU, the Department agrees to review, in the context of CUC's next rate case, CUC's proposed amount of such recurring costs and to work with CUC to reach agreement concerning the reasonable and necessary amount of any such costs.

5. Past DSM Costs. The Department agrees that in a rate proceeding to review DSM costs incurred by CUC during calendar years 1996, 1997, and/or 1998, it will not seek any penalties for flawed DSM program design or implementation. The Department reserves the right to seek adjustments and/or disallowances of any such costs, including but not limited to adjustments or disallowances as are appropriate under the partial stipulation concerning remedial DSM filed with the Board on June 4, 1998 in Dockets 5841/5859.

6. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix D. Exhibit DPS-MOU-4: The Enosburg-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND ENOSBURG FALLS ELECTRIC LIGHT DEPARTMENT

This bilateral agreement entered into by and between Enosburg Falls Electric Light Department (the "Municipal Utility") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the Department and the Municipal Utility, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including the Municipal Utility, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean the Municipal Utility and the Department.

1. The Department and the Municipal Utility agree that the funding for the EEU from within the service territory of the Municipal Utility shall be as follows for the first three years: for year 2000, $37,283; for year 2001, $47,070; for year 2002, $55,147.

2. With reference to paragraph 22 of the MOU, the Municipal Utility's 1999 budgeted figure for DSM as provided by the Municipal Utility to the Department on March 8, 1999 is $41,050.

3. Notwithstanding the provisions of paragraph 51 of the MOU, and unless or until such time as a final result is reached in Docket 5611 (or a proceeding which includes fully equivalent scope and substance) that replaces the 5% externalities adder derived in Docket 5270, the Municipal Utility may use the 5% externalities adder as established by the Board in Docket 5270, instead of the 0.7 cent/kWh adder set by the MOU, for any

System-wide Programs which the Municipal Utility chooses to voluntarily provide pursuant to paragraph 13 of the MOU. However, in the event that the Municipal Utility becomes a subcontractor to the EEU, pursuant either to paragraph 6 or 7 of the MOU, for one or more System-wide Programs approved by the Board for EEU implementation, this paragraph shall not relieve the Municipal Utility of the obligation to deliver those EEU programs in the same manner, and using the same avoided costs including externalities, that would apply if those EEU programs were delivered directly by the EEU or any other subcontractor to the EEU.

4. In accordance with paragraph 51 of the MOU, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described in the MOU, or by an Order of the Board, the Municipal Utility will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

5. Notwithstanding any contrary provisions contained in paragraph 50 of the MOU, the Municipal Utility shall have the option, in delivering voluntary System-wide Programs, which are not the Core Programs or other System-wide Programs approved by the Board for implementation by the EEU, to propose and use the Municipal Utility's own figures for avoided T&D capacity costs. This option on the part of the Municipal Utility shall not affect the ability of the DPS to challenge such alternative figures, except that the Municipal Utility shall be allowed to use its own figures unless or until directed to do otherwise in a final order issued by the PSB.

6. The effectiveness of this Agreement and the MOU in binding the Municipal Utility in any regard shall be contingent upon a finding by the Board that it is reasonable for the Municipal Utility to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding the Municipal Utility and shall not bind the Department with respect to the Municipal Utility.

7. Except in acting to seek PSB approval of the MOU and this bilateral agreement, the provisions of paragraph 66 of the MOU shall not create an obligation on the part of the Municipal Utility to take action, but shall apply when the Municipal Utility chooses to act or communicate or is otherwise acting or communicating with respect to or concerning matters which reasonably could affect the approval, establishment, funding and implementation of the EEU in accordance with the MOU and this bilateral agreement.

8. The Parties agree that the Municipal Utility's agreement to the MOU does not give rise to DUP obligations beyond the obligations set forth in 30 V.S.A. § 218c and the obligations and principles set forth in the Board's Order in Docket 5270. The preceding sentence shall not be construed to exempt the Municipal Utility from an otherwise applicable future Board Order regarding obligations of the Municipal Utility as to DUP.

9. To the extent the Municipal Utility uses postcard or "printed through the envelope" billing and does not send bill inserts to customers, the Parties agree that, instead of the bill insert agreed upon in paragraph 25 of the MOU, the Municipal Utility will publish in a newspaper of general circulation within its service territory a notice developed by mutual agreement of the Municipal Utility and the DPS explaining the reasons for the line item charge for the EEU, the nature and purpose of the EEU, and such other matters as are relevant to the charge. Any such Municipal Utility will make its list of customer names and addresses available to the EEU for mailings by the EEU.

10. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix E. Exhibit DPS-MOU-5: The GMP-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND GREEN MOUNTAIN POWER CORPORATION

This bilateral agreement entered into by and between Green Mountain Power Corporation ("GMP") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding ("MOU") in this docket. Said MOU sets forth the agreement of the Department and GMP, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including GMP, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean GMP and the Department.

In addition to the terms and conditions set forth in the MOU, GMP and the Department stipulate, covenant and agree to the additional and supplemental terms and conditions set forth below.

1. In accordance with and subject to paragraphs 53, 54, and 56 of the MOU, the Parties agree that the establishment, funding, and support of the EEU in accordance with the MOU, the attachments thereto, and this bilateral agreement, if these documents are approved in their entirety by the Board, shall be considered to resolve all claims based on actions or failures to act prior to January 1, 2000 that GMP failed to satisfy its obligations to plan for and conduct System-wide Programs under 30 V.S.A. §§ 218c, 218b; the Board's orders in Docket Nos. 5270 or 5330; or any requirements to plan for and conduct System-wide Programs contained in any Board order specific to GMP or agreement between GMP and the Department. It is the intention of GMP and the Department that the Board's approval of the MOU and this bilateral agreement shall preclude any party from claiming, or the Board from finding or concluding, that GMP has, at any time prior

to January 1, 2000, failed to satisfy its statutory, regulatory or contractual obligation to undertake or implement System-wide Programs.

2. The Parties agree that all DSM expenditures and ACE claimed by GMP in Docket No. 6107, presently pending before the Board, should be allowed full rate recovery in Docket No. 6107, in the manner and in the amounts requested by GMP in that proceeding.

3. GMP and the Department agree that GMP shall not undertake any further planning or implementation of new DSM programs or initiatives in 1999, except those necessary under the approved transition plan appended as Attachment A to the MOU. GMP shall continue to fund, at current levels, all existing state-wide core programs, through December 31, 1999. GMP's total deferred DSM spending for 1999, which shall include funding of all DSM programs and any and all EEU transition costs incurred in 1999, shall not exceed $1.5 million.

4. This paragraph concerns GMP's recurring expenses to support the EEU such as the expense of coordinating with, or providing data to, the EEU. Such recurring expenses are not included in GMP's allocation of the EEU budget. The Parties project GMP's recurring expenses to support the EEU to be $100,000 per year (unless another mutually agreeable projection is developed) and such projected amount shall be used for purposes of any rate unbundling necessary to reflect the customer EEU benefits charge. To the extent that GMP's reasonable expenditures necessary to support the EEU exceed said sum, GMP shall be permitted to book, defer and recover as appropriate said amounts in its next rate case in accordance with existing DSM cost recovery rules and procedures. The Parties agree that GMP's opportunity to book, defer and recover such amounts is transitional and shall not extend beyond the next GMP rate case subsequent to Docket 6107 without the mutual consent of the Parties.

5. GMP and the Department agree that GMP shall participate in the collaborative process described in the MOU. GMP shall have a reasonable time, to be determined during the

proceedings contemplated in paragraph 31 of the MOU, in which to implement any planning guidelines adopted pursuant to the collaborative or by order of the Public Service Board.

6. The Department and GMP agree that GMP's allocation of the EEU budget for the years 2000, 2001 and 2002 shall be the following amounts:

   a. Year 2000: $2,461,512
   b. Year 2001: $3,303,572
   c. Year 2002: $4,248,473

7. In the event the EEU is funded by a systems benefits charge, during calendar years 2000 and 2001 the amount of GMP's reduction called for in paragraph 22 of the MOU shall be the amount of the benefits charge in GMP's service territory. Notwithstanding any provisions in paragraph 22 of the MOU to the contrary, beginning with the calendar year 2002, the system benefits charge and GMP's rates shall be separately determined in accordance with then-applicable regulatory principles.

8. In the event the EEU is funded through an assessment on individual utilities in accordance with paragraph 24 of the MOU, then the total annual assessment attributable to GMP shall be the amounts set forth in paragraph 1, 6 above. In such event, GMP may book, defer, and recover, subject to paragraph 54 of the MOU, the following: the amount in any calendar year by which the "future DSM costs" exceed the "existing DSM costs" as defined in this paragraph. For purposes of this paragraph, the "future DSM costs" include: the EEU allocation agreed upon in paragraph 1, 6, above; the EEU support expense amount contained in paragraph 8, 4, above; and scheduled amortizations of DSM costs and ACE amounts associated with GMP's individual DSM programs approved in GMP's most recent rate case. For purposes of this paragraph the "existing DSM costs" include: recurring DSM expenses as contained in GMP's most recently approved rate case cost-of-service; and scheduled amortizations, approved by the Board in GMP's most

recent rate case, of DSM expenditures and ACE amounts. To the extent that the "existing DSM costs" exceed the "future DSM costs," GMP shall credit the appropriate deferral account. For purposes of this paragraph, the phrase "EEU support expense" shall exclude any recurring expenses which are approved by the Board in a general rate proceeding concerning GMP. For purposes of this paragraph, "scheduled amortizations" includes any return on associated unamortized balances.

9. Nothing in the MOU or this bilateral agreement shall prevent or prohibit either GMP or the Department from seeking rate adjustments or rate design changes based on any applicable regulatory principles.

10. The Parties agree to cooperate in good faith to achieve implementation of the rate reduction for calendar year 2000 described in paragraph 7, above, within pending Docket 6107.

11. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix F. Exhibit DPS-MOU-6: The Hardwick-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND TOWN OF HARDWICK ELECTRIC DEPARTMENT

This bilateral agreement entered into by and between Town of Hardwick Electric Department (the "Municipal Utility") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the Department and the Municipal Utility, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including the Municipal Utility, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean the Municipal Utility and the Department.

1. The Department and the Municipal Utility agree that the funding for the EEU from within the service territory of the Municipal Utility shall be as follows for the first three years: for year 2000, $60,887; for year 2001, $76,870; for year 2002, $90,061.

2. With reference to paragraph 22 of the MOU, the Municipal Utility's 1999 budgeted figure for DSM as provided by the Municipal Utility to the Department on March 8, 1999 is $50,000.

3. The Municipal Utility's most recent rate case filing reflects annual DSM expenditure levels for both direct and amortized DSM of $33,072. Of this amount, $27,547 is for amortization of previous DSM expenditures.

4. The Municipal Utility will cease further amortization of DSM expenditures beginning on January 1, 2000 and will amortize DSM expenditures accumulated through December 31, 1999 pursuant to a 5-year amortization schedule for expenditures made in each year up to that point.

5. The Parties agree that, for purposes of paragraph 22 of the MOU, the Municipal Utility's amortizations of DSM expenditures incurred prior to January 1, 2000 shall not be considered costs displaced by the benefits charge described in paragraph 21 of the MOU.

6. The Board's May 5, 1999 approval of the Municipal Utility's most recent rate request requires the Municipal Utility to use a $7,756 error resulting in overcollection to reduce existing DSM amortizations and assist in funding the EEU. The Parties agree that, rather than using the overcollection to assist in funding the EEU, the Municipal Utility shall reduce its deferred DSM balances by $7,756 per year commencing May 1, 1999 (the effective date of its last rate change) through the effective date of its next rate change.

7. Notwithstanding the provisions of paragraph 51 of the MOU, and unless or until such time as a final result is reached in Docket 5611 (or a proceeding which includes fully equivalent scope and substance) that replaces the 5% externalities adder derived in Docket 5270, the Municipal Utility may use the 5% externalities adder as established by the Board in Docket 5270, instead of the 0.7 cent/kWh adder set by the MOU, for any System-wide Programs which the Municipal Utility chooses to voluntarily provide pursuant to paragraph 13 of the MOU. However, in the event that the Municipal Utility becomes a subcontractor to the EEU, pursuant either to paragraph 6 or 7 of the MOU, for one or more System-wide Programs approved by the Board for EEU implementation, this paragraph shall not relieve the Municipal Utility of the obligation to deliver those EEU programs in the same manner, and using the same avoided costs including externalities, that would apply if those EEU programs were delivered directly by the EEU or any other subcontractor to the EEU.

8. In accordance with paragraph 51 of the MOU, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described in the MOU, or by an Order of the Board, the Municipal Utility will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

9. Notwithstanding any contrary provisions contained in paragraph 50 of the MOU, the Municipal Utility shall have the option, in delivering voluntary System-wide Programs, which are not the Core Programs or other System-wide Programs approved by the Board for implementation by the EEU, to propose and use the Municipal Utility's own figures for avoided T&D capacity costs. This option on the part of the Municipal Utility shall not affect the ability of the DPS to challenge such alternative figures, except that the Municipal Utility shall be allowed to use its own figures unless or until directed to do otherwise in a final order issued by the PSB.

10. The effectiveness of this Agreement and the MOU in binding the Municipal Utility in any regard shall be contingent upon a finding by the Board that it is reasonable for the Municipal Utility to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding the Municipal Utility and shall not bind the Department with respect to the Municipal Utility.

11. Except in acting to seek PSB approval of the MOU and this bilateral agreement, the provisions of paragraph 66 of the MOU shall not create an obligation on the part of the Municipal Utility to take action, but shall apply when the Municipal Utility chooses to act or communicate or is otherwise acting or communicating with respect to or concerning matters which reasonably could affect the approval, establishment, funding and implementation of the EEU in accordance with the MOU and this bilateral agreement.

12. The Parties agree that the Municipal Utility's agreement to the MOU does not give rise to DUP obligations beyond the obligations set forth in 30 V.S.A. § 218c and the

obligations and principles set forth in the Board's Order in Docket 5270. The preceding sentence shall not be construed to exempt the Municipal Utility from an otherwise applicable future Board Order regarding obligations of the Municipal Utility as to DUP.

13. To the extent the Municipal Utility uses postcard or "printed through the envelope" billing and does not send bill inserts to customers, the Parties agree that, instead of the bill insert agreed upon in paragraph 25 of the MOU, the Municipal Utility will publish in a newspaper of general circulation within its service territory a notice developed by mutual agreement of the Municipal Utility and the DPS explaining the reasons for the line item charge for the EEU, the nature and purpose of the EEU, and such other matters as are relevant to the charge. Any such Municipal Utility will make its list of customer names and addresses available to the EEU for mailings by the EEU.

14. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix G. Exhibit DPS-MOU-7: The Hyde Park-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND VILLAGE OF HYDE PARK ELECTRIC DEPARTMENT

This bilateral agreement entered into by and between Village of Hyde Park Electric Department (the "Municipal Utility") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the Department and the Municipal Utility, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including the Municipal Utility, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean the Municipal Utility and the Department.

1. The Department and the Municipal Utility agree that the funding for the EEU from within the service territory of the Municipal Utility shall be as follows for the first three years: for year 2000, $20,410; for year 2001, $25,768; for year 2002, $30,190.

2. With reference to paragraph 22 of the MOU, the Municipal Utility's 1999 budgeted figure for DSM as provided by the Municipal Utility to the Department on March 8, 1999 is $2,000.

3. Notwithstanding the provisions of paragraph 51 of the MOU, and unless or until such time as a final result is reached in Docket 5611 (or a proceeding which includes fully equivalent scope and substance) that replaces the 5% externalities adder derived in Docket 5270, the Municipal Utility may use the 5% externalities adder as established by the Board in Docket 5270, instead of the 0.7 cent/kWh adder set by the MOU, for any

System-wide Programs which the Municipal Utility chooses to voluntarily provide pursuant to paragraph 13 of the MOU. However, in the event that the Municipal Utility becomes a subcontractor to the EEU, pursuant either to paragraph 6 or 7 of the MOU, for one or more System-wide Programs approved by the Board for EEU implementation, this paragraph shall not relieve the Municipal Utility of the obligation to deliver those EEU programs in the same manner, and using the same avoided costs including externalities, that would apply if those EEU programs were delivered directly by the EEU or any other subcontractor to the EEU.

4. In accordance with paragraph 51 of the MOU, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described in the MOU, or by an Order of the Board, the Municipal Utility will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

5. Notwithstanding any contrary provisions contained in paragraph 50 of the MOU, the Municipal Utility shall have the option, in delivering voluntary System-wide Programs, which are not the Core Programs or other System-wide Programs approved by the Board for implementation by the EEU, to propose and use the Municipal Utility's own figures for avoided T&D capacity costs. This option on the part of the Municipal Utility shall not affect the ability of the DPS to challenge such alternative figures, except that the Municipal Utility shall be allowed to use its own figures unless or until directed to do otherwise in a final order issued by the PSB.

6. The effectiveness of this Agreement and the MOU in binding the Municipal Utility in any regard shall be contingent upon a finding by the Board that it is reasonable for the Municipal Utility to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding the Municipal Utility and shall not bind the Department with respect to the Municipal Utility.

7. Except in acting to seek PSB approval of the MOU and this bilateral agreement, the provisions of paragraph 66 of the MOU shall not create an obligation on the part of the Municipal Utility to take action, but shall apply when the Municipal Utility chooses to act or communicate or is otherwise acting or communicating with respect to or concerning matters which reasonably could affect the approval, establishment, funding and implementation of the EEU in accordance with the MOU and this bilateral agreement.

8. The Parties agree that the Municipal Utility's agreement to the MOU does not give rise to DUP obligations beyond the obligations set forth in 30 V.S.A. § 218c and the obligations and principles set forth in the Board's Order in Docket 5270. The preceding sentence shall not be construed to exempt the Municipal Utility from an otherwise applicable future Board Order regarding obligations of the Municipal Utility as to DUP.

9. To the extent the Municipal Utility uses postcard or "printed through the envelope" billing and does not send bill inserts to customers, the Parties agree that, instead of the bill insert agreed upon in paragraph 25 of the MOU, the Municipal Utility will publish in a newspaper of general circulation within its service territory a notice developed by mutual agreement of the Municipal Utility and the DPS explaining the reasons for the line item charge for the EEU, the nature and purpose of the EEU, and such other matters as are relevant to the charge. Any such Municipal Utility will make its list of customer names and addresses available to the EEU for mailings by the EEU.

10. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix H. Exhibit DPS-MOU-8: The Jacksonville-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND JACKSONVILLE, INC. ELECTRIC DEPARTMENT

This bilateral agreement entered into by and between Jacksonville, Inc. Electric Department (the "Municipal Utility") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the Department and the Municipal Utility, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including the Municipal Utility, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean the Municipal Utility and the Department.

1. The Department and the Municipal Utility agree that the funding for the EEU from within the service territory of the Municipal Utility shall be as follows for the first three years: for year 2000, $11,264; for year 2001, $14,221; for year 2002, $16,661.

2. With reference to paragraph 22 of the MOU, the Municipal Utility's 1999 budgeted figure for DSM as provided by the Municipal Utility to the Department on March 8, 1999 is $0.00.

3. Notwithstanding the provisions of paragraph 51 of the MOU, and unless or until such time as a final result is reached in Docket 5611 (or a proceeding which includes fully equivalent scope and substance) that replaces the 5% externalities adder derived in Docket 5270, the Municipal Utility may use the 5% externalities adder as established by the Board in Docket 5270, instead of the 0.7 cent/kWh adder set by the MOU, for any

System-wide Programs which the Municipal Utility chooses to voluntarily provide pursuant to paragraph 13 of the MOU. However, in the event that the Municipal Utility becomes a subcontractor to the EEU, pursuant either to paragraph 6 or 7 of the MOU, for one or more System-wide Programs approved by the Board for EEU implementation, this paragraph shall not relieve the Municipal Utility of the obligation to deliver those EEU programs in the same manner, and using the same avoided costs including externalities, that would apply if those EEU programs were delivered directly by the EEU or any other subcontractor to the EEU.

4. In accordance with paragraph 51 of the MOU, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described in the MOU, or by an Order of the Board, the Municipal Utility will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

5. Notwithstanding any contrary provisions contained in paragraph 50 of the MOU, the Municipal Utility shall have the option, in delivering voluntary System-wide Programs, which are not the Core Programs or other System-wide Programs approved by the Board for implementation by the EEU, to propose and use the Municipal Utility's own figures for avoided T&D capacity costs. This option on the part of the Municipal Utility shall not affect the ability of the DPS to challenge such alternative figures, except that the Municipal Utility shall be allowed to use its own figures unless or until directed to do otherwise in a final order issued by the PSB.

6. The effectiveness of this Agreement and the MOU in binding the Municipal Utility in any regard shall be contingent upon a finding by the Board that it is reasonable for the Municipal Utility to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding the Municipal Utility and shall not bind the Department with respect to the Municipal Utility.

7. Except in acting to seek PSB approval of the MOU and this bilateral agreement, the provisions of paragraph 66 of the MOU shall not create an obligation on the part of the Municipal Utility to take action, but shall apply when the Municipal Utility chooses to act or communicate or is otherwise acting or communicating with respect to or concerning matters which reasonably could affect the approval, establishment, funding and implementation of the EEU in accordance with the MOU and this bilateral agreement.

8. The Parties agree that the Municipal Utility's agreement to the MOU does not give rise to DUP obligations beyond the obligations set forth in 30 V.S.A. § 218c and the obligations and principles set forth in the Board's Order in Docket 5270. The preceding sentence shall not be construed to exempt the Municipal Utility from an otherwise applicable future Board Order regarding obligations of the Municipal Utility as to DUP.

9. To the extent the Municipal Utility uses postcard or "printed through the envelope" billing and does not send bill inserts to customers, the Parties agree that, instead of the bill insert agreed upon in paragraph 25 of the MOU, the Municipal Utility will publish in a newspaper of general circulation within its service territory a notice developed by mutual agreement of the Municipal Utility and the DPS explaining the reasons for the line item charge for the EEU, the nature and purpose of the EEU, and such other matters as are relevant to the charge. Any such Municipal Utility will make its list of customer names and addresses available to the EEU for mailings by the EEU.

10. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix I. Exhibit DPS-MOU-9: The Johnson-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND JOHNSON ELECTRIC LIGHT DEPARTMENT

This bilateral agreement entered into by and between Johnson Electric Light Department (the "Municipal Utility") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the Department and the Municipal Utility, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including the Municipal Utility, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean the Municipal Utility and the Department.

1. The Department and the Municipal Utility agree that the funding for the EEU from within the service territory of the Municipal Utility shall be as follows for the first three years: for year 2000, $34,316; for year 2001, $43,324; for year 2002, $50,758.

2. With reference to paragraph 22 of the MOU, the Municipal Utility's 1999 budgeted figure for DSM as provided by the Municipal Utility to the Department on March 8, 1999 is $31,175.

3. Notwithstanding the provisions of paragraph 51 of the MOU, and unless or until such time as a final result is reached in Docket 5611 (or a proceeding which includes fully equivalent scope and substance) that replaces the 5% externalities adder derived in Docket 5270, the Municipal Utility may use the 5% externalities adder as established by the Board in Docket 5270, instead of the 0.7 cent/kWh adder set by the MOU, for any

System-wide Programs which the Municipal Utility chooses to voluntarily provide pursuant to paragraph 13 of the MOU. However, in the event that the Municipal Utility becomes a subcontractor to the EEU, pursuant either to paragraph 6 or 7 of the MOU, for one or more System-wide Programs approved by the Board for EEU implementation, this paragraph shall not relieve the Municipal Utility of the obligation to deliver those EEU programs in the same manner, and using the same avoided costs including externalities, that would apply if those EEU programs were delivered directly by the EEU or any other subcontractor to the EEU.

4. In accordance with paragraph 51 of the MOU, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described in the MOU, or by an Order of the Board, the Municipal Utility will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

5. Notwithstanding any contrary provisions contained in paragraph 50 of the MOU, the Municipal Utility shall have the option, in delivering voluntary System-wide Programs, which are not the Core Programs or other System-wide Programs approved by the Board for implementation by the EEU, to propose and use the Municipal Utility's own figures for avoided T&D capacity costs. This option on the part of the Municipal Utility shall not affect the ability of the DPS to challenge such alternative figures, except that the Municipal Utility shall be allowed to use its own figures unless or until directed to do otherwise in a final order issued by the PSB.

6. The effectiveness of this Agreement and the MOU in binding the Municipal Utility in any regard shall be contingent upon a finding by the Board that it is reasonable for the Municipal Utility to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding the Municipal Utility and shall not bind the Department with respect to the Municipal Utility.

7. Except in acting to seek PSB approval of the MOU and this bilateral agreement, the provisions of paragraph 66 of the MOU shall not create an obligation on the part of the Municipal Utility to take action, but shall apply when the Municipal Utility chooses to act or communicate or is otherwise acting or communicating with respect to or concerning matters which reasonably could affect the approval, establishment, funding and implementation of the EEU in accordance with the MOU and this bilateral agreement.

8. The Parties agree that the Municipal Utility's agreement to the MOU does not give rise to DUP obligations beyond the obligations set forth in 30 V.S.A. § 218c and the obligations and principles set forth in the Board's Order in Docket 5270. The preceding sentence shall not be construed to exempt the Municipal Utility from an otherwise applicable future Board Order regarding obligations of the Municipal Utility as to DUP.

9. To the extent the Municipal Utility uses postcard or "printed through the envelope" billing and does not send bill inserts to customers, the Parties agree that, instead of the bill insert agreed upon in paragraph 25 of the MOU, the Municipal Utility will publish in a newspaper of general circulation within its service territory a notice developed by mutual agreement of the Municipal Utility and the DPS explaining the reasons for the line item charge for the EEU, the nature and purpose of the EEU, and such other matters as are relevant to the charge. Any such Municipal Utility will make its list of customer names and addresses available to the EEU for mailings by the EEU.

10. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix J. Exhibit DPS-MOU-10: The Ludlow-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND LUDLOW ELECTRIC LIGHT DEPARTMENT

This bilateral agreement entered into by and between Ludlow Electric Light Department (the "Municipal Utility") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the Department and the Municipal Utility, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including the Municipal Utility, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean the Municipal Utility and the Department.

1. The Department and the Municipal Utility agree that the funding for the EEU from within the service territory of the Municipal Utility shall be as follows for the first three years: for year 2000, $89,318; for year 2001, $112,764; for year 2002, $132,115.

2. With reference to paragraph 22 of the MOU, the Municipal Utility's 1999 budgeted figure for DSM as provided by the Municipal Utility to the Department on March 8, 1999 is $50,000.

3. Notwithstanding the provisions of paragraph 51 of the MOU, and unless or until such time as a final result is reached in Docket 5611 (or a proceeding which includes fully equivalent scope and substance) that replaces the 5% externalities adder derived in Docket 5270, the Municipal Utility may use the 5% externalities adder as established by the Board in Docket 5270, instead of the 0.7 cent/kWh adder set by the MOU, for any

System-wide Programs which the Municipal Utility chooses to voluntarily provide pursuant to paragraph 13 of the MOU. However, in the event that the Municipal Utility becomes a subcontractor to the EEU, pursuant either to paragraph 6 or 7 of the MOU, for one or more System-wide Programs approved by the Board for EEU implementation, this paragraph shall not relieve the Municipal Utility of the obligation to deliver those EEU programs in the same manner, and using the same avoided costs including externalities, that would apply if those EEU programs were delivered directly by the EEU or any other subcontractor to the EEU.

4. In accordance with paragraph 51 of the MOU, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described in the MOU, or by an Order of the Board, the Municipal Utility will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

5. Notwithstanding any contrary provisions contained in paragraph 50 of the MOU, the Municipal Utility shall have the option, in delivering voluntary System-wide Programs, which are not the Core Programs or other System-wide Programs approved by the Board for implementation by the EEU, to propose and use the Municipal Utility's own figures for avoided T&D capacity costs. This option on the part of the Municipal Utility shall not affect the ability of the DPS to challenge such alternative figures, except that the Municipal Utility shall be allowed to use its own figures unless or until directed to do otherwise in a final order issued by the PSB.

6. The effectiveness of this Agreement and the MOU in binding the Municipal Utility in any regard shall be contingent upon a finding by the Board that it is reasonable for the Municipal Utility to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding the Municipal Utility and shall not bind the Department with respect to the Municipal Utility.

7. Except in acting to seek PSB approval of the MOU and this bilateral agreement, the provisions of paragraph 66 of the MOU shall not create an obligation on the part of the Municipal Utility to take action, but shall apply when the Municipal Utility chooses to act or communicate or is otherwise acting or communicating with respect to or concerning matters which reasonably could affect the approval, establishment, funding and implementation of the EEU in accordance with the MOU and this bilateral agreement.

8. The Parties agree that the Municipal Utility's agreement to the MOU does not give rise to DUP obligations beyond the obligations set forth in 30 V.S.A. § 218c and the obligations and principles set forth in the Board's Order in Docket 5270. The preceding sentence shall not be construed to exempt the Municipal Utility from an otherwise applicable future Board Order regarding obligations of the Municipal Utility as to DUP.

9. To the extent the Municipal Utility uses postcard or "printed through the envelope" billing and does not send bill inserts to customers, the Parties agree that, instead of the bill insert agreed upon in paragraph 25 of the MOU, the Municipal Utility will publish in a newspaper of general circulation within its service territory a notice developed by mutual agreement of the Municipal Utility and the DPS explaining the reasons for the line item charge for the EEU, the nature and purpose of the EEU, and such other matters as are relevant to the charge. Any such Municipal Utility will make its list of customer names and addresses available to the EEU for mailings by the EEU.

10. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix K. Exhibit DPS-MOU-11: The Lyndonville-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND LYNDONVILLE ELECTRIC LIGHT DEPARTMENT

This bilateral agreement entered into by and between Lyndonville Electric Light Department (the "Municipal Utility") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the Department and the Municipal Utility, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including the Municipal Utility, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean the Municipal Utility and the Department.

1. The Department and the Municipal Utility agree that the funding for the EEU from within the service territory of the Municipal Utility shall be as follows for the first three years: for year 2000, $127,238; for year 2001, $160,638; for year 2002, $188,203.

2. With reference to paragraph 22 of the MOU, the Municipal Utility's 1999 budgeted figure for DSM as provided by the Municipal Utility to the Department on March 8, 1999 is $52,500.

3. Notwithstanding the provisions of paragraph 51 of the MOU, and unless or until such time as a final result is reached in Docket 5611 (or a proceeding which includes fully equivalent scope and substance) that replaces the 5% externalities adder derived in Docket 5270, the Municipal Utility may use the 5% externalities adder as established by the Board in Docket 5270, instead of the 0.7 cent/kWh adder set by the MOU, for any

System-wide Programs which the Municipal Utility chooses to voluntarily provide pursuant to paragraph 13 of the MOU. However, in the event that the Municipal Utility becomes a subcontractor to the EEU, pursuant either to paragraph 6 or 7 of the MOU, for one or more System-wide Programs approved by the Board for EEU implementation, this paragraph shall not relieve the Municipal Utility of the obligation to deliver those EEU programs in the same manner, and using the same avoided costs including externalities, that would apply if those EEU programs were delivered directly by the EEU or any other subcontractor to the EEU.

4. In accordance with paragraph 51 of the MOU, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described in the MOU, or by an Order of the Board, the Municipal Utility will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

5. Notwithstanding any contrary provisions contained in paragraph 50 of the MOU, the Municipal Utility shall have the option, in delivering voluntary System-wide Programs, which are not the Core Programs or other System-wide Programs approved by the Board for implementation by the EEU, to propose and use the Municipal Utility's own figures for avoided T&D capacity costs. This option on the part of the Municipal Utility shall not affect the ability of the DPS to challenge such alternative figures, except that the Municipal Utility shall be allowed to use its own figures unless or until directed to do otherwise in a final order issued by the PSB.

6. The effectiveness of this Agreement and the MOU in binding the Municipal Utility in any regard shall be contingent upon a finding by the Board that it is reasonable for the Municipal Utility to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding the Municipal Utility and shall not bind the Department with respect to the Municipal Utility.

7. Except in acting to seek PSB approval of the MOU and this bilateral agreement, the provisions of paragraph 66 of the MOU shall not create an obligation on the part of the Municipal Utility to take action, but shall apply when the Municipal Utility chooses to act or communicate or is otherwise acting or communicating with respect to or concerning matters which reasonably could affect the approval, establishment, funding and implementation of the EEU in accordance with the MOU and this bilateral agreement.

8. The Parties agree that the Municipal Utility's agreement to the MOU does not give rise to DUP obligations beyond the obligations set forth in 30 V.S.A. § 218c and the obligations and principles set forth in the Board's Order in Docket 5270. The preceding sentence shall not be construed to exempt the Municipal Utility from an otherwise applicable future Board Order regarding obligations of the Municipal Utility as to DUP.

9. To the extent the Municipal Utility uses postcard or "printed through the envelope" billing and does not send bill inserts to customers, the Parties agree that, instead of the bill insert agreed upon in paragraph 25 of the MOU, the Municipal Utility will publish in a newspaper of general circulation within its service territory a notice developed by mutual agreement of the Municipal Utility and the DPS explaining the reasons for the line item charge for the EEU, the nature and purpose of the EEU, and such other matters as are relevant to the charge. Any such Municipal Utility will make its list of customer names and addresses available to the EEU for mailings by the EEU.

10. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix L. Exhibit DPS-MOU-12: The Morrisville-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND MORRISVILLE WATER & LIGHT DEPARTMENT

This bilateral agreement entered into by and between Morrisville Water & Light Department (the "Municipal Utility") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the Department and the Municipal Utility, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including the Municipal Utility, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean the Municipal Utility and the Department.

1. The Department and the Municipal Utility agree that the funding for the EEU from within the service territory of the Municipal Utility shall be as follows for the first three years: for year 2000, $83,477; for year 2001, $105,390; for year 2002, $123,475.

2. With reference to paragraph 22 of the MOU, the Municipal Utility's 1999 budgeted figure for DSM as provided by the Municipal Utility to the Department on March 8, 1999 is $65,000.

3. Notwithstanding the provisions of paragraph 51 of the MOU, and unless or until such time as a final result is reached in Docket 5611 (or a proceeding which includes fully equivalent scope and substance) that replaces the 5% externalities adder derived in Docket 5270, the Municipal Utility may use the 5% externalities adder as established by the Board in Docket 5270, instead of the 0.7 cent/kWh adder set by the MOU, for any

System-wide Programs which the Municipal Utility chooses to voluntarily provide pursuant to paragraph 13 of the MOU. However, in the event that the Municipal Utility becomes a subcontractor to the EEU, pursuant either to paragraph 6 or 7 of the MOU, for one or more System-wide Programs approved by the Board for EEU implementation, this paragraph shall not relieve the Municipal Utility of the obligation to deliver those EEU programs in the same manner, and using the same avoided costs including externalities, that would apply if those EEU programs were delivered directly by the EEU or any other subcontractor to the EEU.

4. In accordance with paragraph 51 of the MOU, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described in the MOU, or by an Order of the Board, the Municipal Utility will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

5. Notwithstanding any contrary provisions contained in paragraph 50 of the MOU, the Municipal Utility shall have the option, in delivering voluntary System-wide Programs, which are not the Core Programs or other System-wide Programs approved by the Board for implementation by the EEU, to propose and use the Municipal Utility's own figures for avoided T&D capacity costs. This option on the part of the Municipal Utility shall not affect the ability of the DPS to challenge such alternative figures, except that the Municipal Utility shall be allowed to use its own figures unless or until directed to do otherwise in a final order issued by the PSB.

6. The effectiveness of this Agreement and the MOU in binding the Municipal Utility in any regard shall be contingent upon a finding by the Board that it is reasonable for the Municipal Utility to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding the Municipal Utility and shall not bind the Department with respect to the Municipal Utility.

7. Except in acting to seek PSB approval of the MOU and this bilateral agreement, the provisions of paragraph 66 of the MOU shall not create an obligation on the part of the Municipal Utility to take action, but shall apply when the Municipal Utility chooses to act or communicate or is otherwise acting or communicating with respect to or concerning matters which reasonably could affect the approval, establishment, funding and implementation of the EEU in accordance with the MOU and this bilateral agreement.

8. The Parties agree that the Municipal Utility's agreement to the MOU does not give rise to DUP obligations beyond the obligations set forth in 30 V.S.A. § 218c and the obligations and principles set forth in the Board's Order in Docket 5270. The preceding sentence shall not be construed to exempt the Municipal Utility from an otherwise applicable future Board Order regarding obligations of the Municipal Utility as to DUP.

9. To the extent the Municipal Utility uses postcard or "printed through the envelope" billing and does not send bill inserts to customers, the Parties agree that, instead of the bill insert agreed upon in paragraph 25 of the MOU, the Municipal Utility will publish in a newspaper of general circulation within its service territory a notice developed by mutual agreement of the Municipal Utility and the DPS explaining the reasons for the line item charge for the EEU, the nature and purpose of the EEU, and such other matters as are relevant to the charge. Any such Municipal Utility will make its list of customer names and addresses available to the EEU for mailings by the EEU.

10. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix M. Exhibit DPS-MOU-13: The Northfield-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND NORTHFIELD ELECTRIC DEPARTMENT

This bilateral agreement entered into by and between Northfield Electric Department (the "Municipal Utility") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the Department and the Municipal Utility, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including the Municipal Utility, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean the Municipal Utility and the Department.

1. The Department and the Municipal Utility agree that the funding for the EEU from within the service territory of the Municipal Utility shall be as follows for the first three years: for year 2000, $50,014; for year 2001, $63,143; for year 2002, $73,978.

2. With reference to paragraph 22 of the MOU, the Municipal Utility's 1999 budgeted figure for DSM as provided by the Municipal Utility to the Department on March 8, 1999 is $20,000.

3. Notwithstanding the provisions of paragraph 51 of the MOU, and unless or until such time as a final result is reached in Docket 5611 (or a proceeding which includes fully equivalent scope and substance) that replaces the 5% externalities adder derived in Docket 5270, the Municipal Utility may use the 5% externalities adder as established by the Board in Docket 5270, instead of the 0.7 cent/kWh adder set by the MOU, for any

System-wide Programs which the Municipal Utility chooses to voluntarily provide pursuant to paragraph 13 of the MOU. However, in the event that the Municipal Utility becomes a subcontractor to the EEU, pursuant either to paragraph 6 or 7 of the MOU, for one or more System-wide Programs approved by the Board for EEU implementation, this paragraph shall not relieve the Municipal Utility of the obligation to deliver those EEU programs in the same manner, and using the same avoided costs including externalities, that would apply if those EEU programs were delivered directly by the EEU or any other subcontractor to the EEU.

4. In accordance with paragraph 51 of the MOU, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described in the MOU, or by an Order of the Board, the Municipal Utility will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

5. Notwithstanding any contrary provisions contained in paragraph 50 of the MOU, the Municipal Utility shall have the option, in delivering voluntary System-wide Programs, which are not the Core Programs or other System-wide Programs approved by the Board for implementation by the EEU, to propose and use the Municipal Utility's own figures for avoided T&D capacity costs. This option on the part of the Municipal Utility shall not affect the ability of the DPS to challenge such alternative figures, except that the Municipal Utility shall be allowed to use its own figures unless or until directed to do otherwise in a final order issued by the PSB.

6. The effectiveness of this Agreement and the MOU in binding the Municipal Utility in any regard shall be contingent upon a finding by the Board that it is reasonable for the Municipal Utility to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding the Municipal Utility and shall not bind the Department with respect to the Municipal Utility.

7. Except in acting to seek PSB approval of the MOU and this bilateral agreement, the provisions of paragraph 66 of the MOU shall not create an obligation on the part of the Municipal Utility to take action, but shall apply when the Municipal Utility chooses to act or communicate or is otherwise acting or communicating with respect to or concerning matters which reasonably could affect the approval, establishment, funding and implementation of the EEU in accordance with the MOU and this bilateral agreement.

8. The Parties agree that the Municipal Utility's agreement to the MOU does not give rise to DUP obligations beyond the obligations set forth in 30 V.S.A. § 218c and the obligations and principles set forth in the Board's Order in Docket 5270. The preceding sentence shall not be construed to exempt the Municipal Utility from an otherwise applicable future Board Order regarding obligations of the Municipal Utility as to DUP.

9. To the extent the Municipal Utility uses postcard or "printed through the envelope" billing and does not send bill inserts to customers, the Parties agree that, instead of the bill insert agreed upon in paragraph 25 of the MOU, the Municipal Utility will publish in a newspaper of general circulation within its service territory a notice developed by mutual agreement of the Municipal Utility and the DPS explaining the reasons for the line item charge for the EEU, the nature and purpose of the EEU, and such other matters as are relevant to the charge. Any such Municipal Utility will make its list of customer names and addresses available to the EEU for mailings by the EEU.

10. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix N. Exhibit DPS-MOU-14: The Orleans-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND ORLEANS ELECTRIC DEPARTMENT

This bilateral agreement entered into by and between Orleans Electric Department (the "Municipal Utility") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the Department and the Municipal Utility, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including the Municipal Utility, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean the Municipal Utility and the Department.

1. The Department and the Municipal Utility agree that the funding for the EEU from within the service territory of the Municipal Utility shall be as follows for the first three years: for year 2000, $34,957; for year 2001, $44,133; for year 2002, $51,706.

2. With reference to paragraph 22 of the MOU, the Municipal Utility's 1999 budgeted figure for DSM as provided by the Municipal Utility to the Department on March 8, 1999 is $20,000.

3. Notwithstanding the provisions of paragraph 51 of the MOU, and unless or until such time as a final result is reached in Docket 5611 (or a proceeding which includes fully equivalent scope and substance) that replaces the 5% externalities adder derived in Docket 5270, the Municipal Utility may use the 5% externalities adder as established by the Board in Docket 5270, instead of the 0.7 cent/kWh adder set by the MOU, for any

System-wide Programs which the Municipal Utility chooses to voluntarily provide pursuant to paragraph 13 of the MOU. However, in the event that the Municipal Utility becomes a subcontractor to the EEU, pursuant either to paragraph 6 or 7 of the MOU, for one or more System-wide Programs approved by the Board for EEU implementation, this paragraph shall not relieve the Municipal Utility of the obligation to deliver those EEU programs in the same manner, and using the same avoided costs including externalities, that would apply if those EEU programs were delivered directly by the EEU or any other subcontractor to the EEU.

4. In accordance with paragraph 51 of the MOU, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described in the MOU, or by an Order of the Board, the Municipal Utility will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

5. Notwithstanding any contrary provisions contained in paragraph 50 of the MOU, the Municipal Utility shall have the option, in delivering voluntary System-wide Programs, which are not the Core Programs or other System-wide Programs approved by the Board for implementation by the EEU, to propose and use the Municipal Utility's own figures for avoided T&D capacity costs. This option on the part of the Municipal Utility shall not affect the ability of the DPS to challenge such alternative figures, except that the Municipal Utility shall be allowed to use its own figures unless or until directed to do otherwise in a final order issued by the PSB.

6. The effectiveness of this Agreement and the MOU in binding the Municipal Utility in any regard shall be contingent upon a finding by the Board that it is reasonable for the Municipal Utility to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding the Municipal Utility and shall not bind the Department with respect to the Municipal Utility.

7. Except in acting to seek PSB approval of the MOU and this bilateral agreement, the provisions of paragraph 66 of the MOU shall not create an obligation on the part of the Municipal Utility to take action, but shall apply when the Municipal Utility chooses to act or communicate or is otherwise acting or communicating with respect to or concerning matters which reasonably could affect the approval, establishment, funding and implementation of the EEU in accordance with the MOU and this bilateral agreement.

8. The Parties agree that the Municipal Utility's agreement to the MOU does not give rise to DUP obligations beyond the obligations set forth in 30 V.S.A. § 218c and the obligations and principles set forth in the Board's Order in Docket 5270. The preceding sentence shall not be construed to exempt the Municipal Utility from an otherwise applicable future Board Order regarding obligations of the Municipal Utility as to DUP.

9. To the extent the Municipal Utility uses postcard or "printed through the envelope" billing and does not send bill inserts to customers, the Parties agree that, instead of the bill insert agreed upon in paragraph 25 of the MOU, the Municipal Utility will publish in a newspaper of general circulation within its service territory a notice developed by mutual agreement of the Municipal Utility and the DPS explaining the reasons for the line item charge for the EEU, the nature and purpose of the EEU, and such other matters as are relevant to the charge. Any such Municipal Utility will make its list of customer names and addresses available to the EEU for mailings by the EEU.

10. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix O. Exhibit DPS-MOU-15: The Readsboro-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND TOWN OF READSBORO ELECTRIC DEPARTMENT

This bilateral agreement entered into by and between Town of Readsboro Electric Department (the "Municipal Utility") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the Department and the Municipal Utility, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including the Municipal Utility, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean the Municipal Utility and the Department.

1. The Department and the Municipal Utility agree that the funding for the EEU from within the service territory of the Municipal Utility shall be as follows for the first three years: for year 2000, $4,673; for year 2001, $5,900; for year 2002, $6,912.

2. With reference to paragraph 22 of the MOU, the Municipal Utility's 1999 budgeted figure for DSM as provided by the Municipal Utility to the Department on March 8, 1999 is $11,899.

3. Notwithstanding the provisions of paragraph 51 of the MOU, and unless or until such time as a final result is reached in Docket 5611 (or a proceeding which includes fully equivalent scope and substance) that replaces the 5% externalities adder derived in Docket 5270, the Municipal Utility may use the 5% externalities adder as established by the Board in Docket 5270, instead of the 0.7 cent/kWh adder set by the MOU, for any System-wide Programs which the Municipal Utility chooses to voluntarily provide

pursuant to paragraph 13 of the MOU. However, in the event that the Municipal Utility becomes a subcontractor to the EEU, pursuant either to paragraph 6 or 7 of the MOU, for one or more System-wide Programs approved by the Board for EEU implementation, this paragraph shall not relieve the Municipal Utility of the obligation to deliver those EEU programs in the same manner, and using the same avoided costs including externalities, that would apply if those EEU programs were delivered directly by the EEU or any other subcontractor to the EEU.

4. In accordance with paragraph 51 of the MOU, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described in the MOU, or by an Order of the Board, the Municipal Utility will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

5. Notwithstanding any contrary provisions contained in paragraph 50 of the MOU, the Municipal Utility shall have the option, in delivering voluntary System-wide Programs, which are not the Core Programs or other System-wide Programs approved by the Board for implementation by the EEU, to propose and use the Municipal Utility's own figures for avoided T&D capacity costs. This option on the part of the Municipal Utility shall not affect the ability of the DPS to challenge such alternative figures, except that the Municipal Utility shall be allowed to use its own figures unless or until directed to do otherwise in a final order issued by the PSB.

6. The effectiveness of this Agreement and the MOU in binding the Municipal Utility in any regard shall be contingent upon a finding by the Board that it is reasonable for the Municipal Utility to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding the Municipal Utility and shall not bind the Department with respect to the Municipal Utility.

7. Except in acting to seek PSB approval of the MOU and this bilateral agreement, the provisions of paragraph 66 of the MOU shall not create an obligation on the part of the Municipal Utility to take action, but shall apply when the Municipal Utility chooses to act or communicate or is otherwise acting or communicating with respect to or concerning matters which reasonably could affect the approval, establishment, funding and implementation of the EEU in accordance with the MOU and this bilateral agreement.

8. The Parties agree that the Municipal Utility's agreement to the MOU does not give rise to DUP obligations beyond the obligations set forth in 30 V.S.A. § 218c and the obligations and principles set forth in the Board's Order in Docket 5270. The preceding sentence shall not be construed to exempt the Municipal Utility from an otherwise applicable future Board Order regarding obligations of the Municipal Utility as to DUP.

9. To the extent the Municipal Utility uses postcard or "printed through the envelope" billing and does not send bill inserts to customers, the Parties agree that, instead of the bill insert agreed upon in paragraph 25 of the MOU, the Municipal Utility will publish in a newspaper of general circulation within its service territory a notice developed by mutual agreement of the Municipal Utility and the DPS explaining the reasons for the line item charge for the EEU, the nature and purpose of the EEU, and such other matters as are relevant to the charge. Any such Municipal Utility will make its list of customer names and addresses available to the EEU for mailings by the EEU.

10. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix P. Exhibit DPS-MOU-16: The Rochester-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND ROCHESTER ELECTRIC LIGHT AND POWER COMPANY

The following document records the agreement between the Department of Public Service (the "Department") and Rochester Electric Light and Power Company ("Rochester") regarding the above-captioned proceedings.

1. Core MOU**.** Rochester and the Department agree that this bilateral agreement incorporates the document which is entitled Memorandum of Understanding and captioned as applying to the above-referenced proceedings ("MOU"). Said MOU sets forth the agreement of the Department and Rochester, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including Rochester, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). It is the purpose of this document to supplement the MOU and to record specific terms, provisions, and conditions with respect to Rochester. Terms defined in the MOU shall have the same meaning when used herein, except that the term "Parties" in this bilateral agreement means the Department and Rochester.

2. Funding: The Department and Rochester agree that Rochester shall fund the EEU budget in the following amounts: for year 2000, $12,890; for year 2001, $16,273; and for year 2002, $19,066.

3. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be

considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix Q. Exhibit DPS-MOU-17: The Stowe-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND STOWE ELECTRIC DEPARTMENT

This bilateral agreement entered into by and between Stowe Electric Department (the "Municipal Utility") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the Department and the Municipal Utility, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including the Municipal Utility, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean the Municipal Utility and the Department.

1. The Department and the Municipal Utility agree that the funding for the EEU from within the service territory of the Municipal Utility shall be as follows for the first three years: for year 2000, $115,652; for year 2001, $146,011; for year 2002, $171,067.

2. With reference to paragraph 22 of the MOU, the Municipal Utility's 1999 budgeted figure for DSM as provided by the Municipal Utility to the Department on March 8, 1999 is $40,000.

3. Notwithstanding the provisions of paragraph 51 of the MOU, and unless or until such time as a final result is reached in Docket 5611 (or a proceeding which includes fully equivalent scope and substance) that replaces the 5% externalities adder derived in Docket 5270, the Municipal Utility may use the 5% externalities adder as established by the Board in Docket 5270, instead of the 0.7 cent/kWh adder set by the MOU, for any

System-wide Programs which the Municipal Utility chooses to voluntarily provide pursuant to paragraph 13 of the MOU. However, in the event that the Municipal Utility becomes a subcontractor to the EEU, pursuant either to paragraph 6 or 7 of the MOU, for one or more System-wide Programs approved by the Board for EEU implementation, this paragraph shall not relieve the Municipal Utility of the obligation to deliver those EEU programs in the same manner, and using the same avoided costs including externalities, that would apply if those EEU programs were delivered directly by the EEU or any other subcontractor to the EEU.

4. In accordance with paragraph 51 of the MOU, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described in the MOU, or by an Order of the Board, the Municipal Utility will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

5. Notwithstanding any contrary provisions contained in paragraph 50 of the MOU, the Municipal Utility shall have the option, in delivering voluntary System-wide Programs, which are not the Core Programs or other System-wide Programs approved by the Board for implementation by the EEU, to propose and use the Municipal Utility's own figures for avoided T&D capacity costs. This option on the part of the Municipal Utility shall not affect the ability of the DPS to challenge such alternative figures, except that the Municipal Utility shall be allowed to use its own figures unless or until directed to do otherwise in a final order issued by the PSB.

6. The effectiveness of this Agreement and the MOU in binding the Municipal Utility in any regard shall be contingent upon a finding by the Board that it is reasonable for the Municipal Utility to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding the Municipal Utility and shall not bind the Department with respect to the Municipal Utility.

7. Except in acting to seek PSB approval of the MOU and this bilateral agreement, the provisions of paragraph 66 of the MOU shall not create an obligation on the part of the Municipal Utility to take action, but shall apply when the Municipal Utility chooses to act or communicate or is otherwise acting or communicating with respect to or concerning matters which reasonably could affect the approval, establishment, funding and implementation of the EEU in accordance with the MOU and this bilateral agreement.

8. The Parties agree that the Municipal Utility's agreement to the MOU does not give rise to DUP obligations beyond the obligations set forth in 30 V.S.A. § 218c and the obligations and principles set forth in the Board's Order in Docket 5270. The preceding sentence shall not be construed to exempt the Municipal Utility from an otherwise applicable future Board Order regarding obligations of the Municipal Utility as to DUP.

9. To the extent the Municipal Utility uses postcard or "printed through the envelope" billing and does not send bill inserts to customers, the Parties agree that, instead of the bill insert agreed upon in paragraph 25 of the MOU, the Municipal Utility will publish in a newspaper of general circulation within its service territory a notice developed by mutual agreement of the Municipal Utility and the DPS explaining the reasons for the line item charge for the EEU, the nature and purpose of the EEU, and such other matters as are relevant to the charge. Any such Municipal Utility will make its list of customer names and addresses available to the EEU for mailings by the EEU.

10. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix R. Exhibit DPS-MOU-18: The Swanton-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND SWANTON ELECTRIC DEPARTMENT

This bilateral agreement entered into by and between Swanton Electric Department (the "Municipal Utility") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the Department and the Municipal Utility, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including the Municipal Utility, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean the Municipal Utility and the Department.

1. The Department and the Municipal Utility agree that the funding for the EEU from within the service territory of the Municipal Utility shall be as follows for the first three years: for year 2000, $106,949; for year 2001, $135,023; for year 2002, $158,193.

2. With reference to paragraph 22 of the MOU, the Municipal Utility's 1999 budgeted figure for DSM as provided by the Municipal Utility to the Department on March 8, 1999 is $150,000.

3. Notwithstanding the provisions of paragraph 51 of the MOU, and unless or until such time as a final result is reached in Docket 5611 (or a proceeding which includes fully equivalent scope and substance) that replaces the 5% externalities adder derived in Docket 5270, the Municipal Utility may use the 5% externalities adder as established by the Board in Docket 5270, instead of the 0.7 cent/kWh adder set by the MOU, for any

System-wide Programs which the Municipal Utility chooses to voluntarily provide pursuant to paragraph 13 of the MOU. However, in the event that the Municipal Utility becomes a subcontractor to the EEU, pursuant either to paragraph 6 or 7 of the MOU, for one or more System-wide Programs approved by the Board for EEU implementation, this paragraph shall not relieve the Municipal Utility of the obligation to deliver those EEU programs in the same manner, and using the same avoided costs including externalities, that would apply if those EEU programs were delivered directly by the EEU or any other subcontractor to the EEU.

4. In accordance with paragraph 51 of the MOU, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described in the MOU, or by an Order of the Board, the Municipal Utility will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

5. Notwithstanding any contrary provisions contained in paragraph 50 of the MOU, the Municipal Utility shall have the option, in delivering voluntary System-wide Programs, which are not the Core Programs or other System-wide Programs approved by the Board for implementation by the EEU, to propose and use the Municipal Utility's own figures for avoided T&D capacity costs. This option on the part of the Municipal Utility shall not affect the ability of the DPS to challenge such alternative figures, except that the Municipal Utility shall be allowed to use its own figures unless or until directed to do otherwise in a final order issued by the PSB.

6. The effectiveness of this Agreement and the MOU in binding the Municipal Utility in any regard shall be contingent upon a finding by the Board that it is reasonable for the Municipal Utility to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding the Municipal Utility and shall not bind the Department with respect to the Municipal Utility.

7. Except in acting to seek PSB approval of the MOU and this bilateral agreement, the provisions of paragraph 66 of the MOU shall not create an obligation on the part of the Municipal Utility to take action, but shall apply when the Municipal Utility chooses to act or communicate or is otherwise acting or communicating with respect to or concerning matters which reasonably could affect the approval, establishment, funding and implementation of the EEU in accordance with the MOU and this bilateral agreement.

8. The Parties agree that the Municipal Utility's agreement to the MOU does not give rise to DUP obligations beyond the obligations set forth in 30 V.S.A. § 218c and the obligations and principles set forth in the Board's Order in Docket 5270. The preceding sentence shall not be construed to exempt the Municipal Utility from an otherwise applicable future Board Order regarding obligations of the Municipal Utility as to DUP.

9. To the extent the Municipal Utility uses postcard or "printed through the envelope" billing and does not send bill inserts to customers, the Parties agree that, instead of the bill insert agreed upon in paragraph 25 of the MOU, the Municipal Utility will publish in a newspaper of general circulation within its service territory a notice developed by mutual agreement of the Municipal Utility and the DPS explaining the reasons for the line item charge for the EEU, the nature and purpose of the EEU, and such other matters as are relevant to the charge. Any such Municipal Utility will make its list of customer names and addresses available to the EEU for mailings by the EEU.

10. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix S. Exhibit DPS-MOU-19: The VEC-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND VERMONT ELECTRIC COOPERATIVE, INC.

The following document records the agreement between the Department of Public Service (the "Department") and the Vermont Electric Cooperative, Inc. ("VEC") regarding the above-captioned proceedings.

1. Core MOU**.** VEC and the Department agree that this bilateral agreement incorporates the document which was filed on April 30, 1999 and is entitled Memorandum of Understanding and captioned as applying to the above-referenced proceedings ("MOU"). Said MOU sets forth the agreement of the Department and VEC, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including VEC, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). It is the purpose of this document to supplement the MOU and to record specific terms, provisions, and conditions with respect to VEC. Terms defined in the MOU shall have the same meaning when used herein, except that the term "Parties" in this bilateral agreement means the Department and VEC.

2. Funding: The Department and VEC agree that VEC shall fund the EEU budget in the following amounts for the first three years: for year 2000, $273,238; for year 2001, $344,963; and for year 2002, $404,158.

3. VEC has provided certain DSM services since January, 1996. VEC will continue providing a subset of these services (the "Continuing Services") through December 31, 2002 in addition to providing its share of funding for and promoting the EEU, on the following terms:

A. VEC will conduct a Residential Retrofit Program free of charge to all members. The program will consist of a walk-through energy audit at the member's home and installation of efficient lighting and water and space-heat conservation measures (excluding incentives for fuel switching). VEC will continue to offer this service to any residential member requesting audits, but members with complaints that their bills are high ("high bill complaints") will receive priority.

B. VEC will fund a Residential Fuel-Switching Program subject to Paragraph 3.D.ii hereof. The details of the program have yet to be determined. The details will be developed in a joint effort between VEC and the DPS.

C. VEC will offer these continuing services to its members without, to the extent reasonably possible, duplicating EEU activities. Nevertheless, some overlap may occur because: (1) the EEU low-income programs have not yet been finalized, and (2) the majority of the audits performed in VEC's retrofit program are expected to be a result of high bill complaints. Many of the high bill complaints VEC receives come from families who may qualify for low-income programs offered by the EEU.

D. Subject to paragraphs 54 and 56 of the MOU, the Department of Public Service agrees it will not oppose VEC in seeking rate recovery for the costs of the Continuing Services to the extent that:

i. the budget for the Residential Retrofit Program does not exceed the following amounts in any calendar year:

2000	$72,000
2001	$74,160
2002	$76,385; and

ii. for the Residential Fuel-Switching Program, total annual costs, including proposed financing, does not exceed $100,000 in any calendar year from 2000 – 2002.

E. In no event will VEC accrue or seek recovery of ACE amounts in connection with the Continuing Services.

F. VEC reserves the right to operate any or all of the Continuing Services in-house if it determines doing so is in the best interests of its members. VEC also reserves the right to contract out any or all of the Continuing Services if it determines doing so is in the best interests of its members.

G. VEC's obligations to offer the Continuing Services expire as of December 31, 2002.

4. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix T. Exhibit DPS-MOU-20: The VM-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND THE VERMONT MARBLE POWER DIVISION OF OMYA, INC.

The following document records the agreement and arrangement between the Department of Public Service (the "Department") and the Vermont Marble Power Division of OMYA, Inc. ("VMPD") regarding the delivery and funding of efficiency services, and particularly those services that are to be provided by the Energy Efficiency Utility ("EEU").

1. **Core MOU:** VMPD and the Department agree that this bilateral agreement incorporates the document which was filed with the Board on April 30, 1999 and is entitled Memorandum of Understanding and captioned as applying to the above-referenced proceedings ("MOU"). Said MOU sets forth the agreement of the Department and VMPD, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the EEU as well as the responsibility of distribution utilities in Vermont, including VMPD, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). It is the purpose of this document to supplement the MOU and to record specific terms, provisions, and conditions regarding the delivery and funding of efficiency services in the VMPD service territory. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" means VMPD and the Department.

2. **Funding of EEU:**

a. The Parties agree that, in accordance with paragraphs 20 through 24 of the MOU and subject to Public Service Board ("Board") approval, the funding for the System-wide Program efficiency services developed, provided, and delivered and undertaken by the EEU will be provided through a separately stated, non-bypassable, volumetric system benefits charge established and collected in conjunction with VMPD's retail rates (the "Benefits Charge") or, if enabling

legislation for such a charge containing language similar to the pending S.137 is not in statute prior to January 1, 2000, as set forth in paragraph 2.c. hereof.

b. With respect to VMPD's system load, the Department agrees that only the VMPD retail load shall be apportioned a Benefits Charge or any portion of the costs and expenses of the EEU. Of the VMPD system load, only VMPD's retail load shall be eligible for any of the System-wide Programs approved for EEU implementation.

c. Following Board approval of the MOU and this bilateral agreement, VMPD's allocation of the EEU budgets shall be the following total amounts from its retail customers during each of the following calendar years:

Total EEU Allocation	Calendar Year
$16,784	2000
$21,189	2001
$24,825	2002

In accordance with paragraphs 20 through 24 of the MOU, the amounts shall be collected through the Benefits Charge or, if enabling legislation for such a charge containing language similar to the pending S.137 is not in statute prior to January 1, 2000, an assessment on VMPD. In the case of VMPD, any such assessment will be collected through retail revenues.

3. Account Correcting for Efficiency:

a. VMPD agrees that it shall not seek to collect for revenue erosion, by means of the Account Correcting for Efficiency ("ACE") mechanism that heretofore has been utilized in Vermont, caused or contributed to by Demand Side Management ("DSM") measures or programs undertaken by VMPD. The foregoing notwithstanding, VMPD specifically may book and seek to collect for such revenue erosion as may be caused by DUP after the date this agreement is approved by the Board or January 1, 2000, whichever is earlier.

b. VMPD agrees that it shall not book or seek to collect for revenue erosion, whether by means of ACE or by such other means, if any, as may be approved by

the Board, caused or contributed to by the measures, programs, and activities of the EEU.

4. Retail Rate Adjustment:

a. In accordance with paragraph 24 of the MOU, the Department agrees to support the establishment of a separately identified charge to retail customers for VMPD's EEU allocation, and the Department and VMPD agree to work in good faith to reach a mutually acceptable separately identified charge for such allocation.

b. VMPD has not adjusted its retail rates since its last rate case (Docket No. 5409, Order entered July 18, 1990). Since that case, VMPD represents that various costs of service have risen, and some may have declined. In addition, VMPD represents that it has undertaken DSM measures and programs in accordance with its approved Integrated Resource Plans ("IRPs"), the costs, expenses, and carrying costs of which have been accumulated but have not been put in rates or collected from VMPD's retail ratepayers. Deferred DSM expenditures in Vermont typically have been amortized and recovered over five years. At such time as VMPD proposes to prepare and file a request for adjustment to its retail rates, in which VMPD may seek to recover changes in its costs of service specifically described herein (including deferred DSM expenditures in accordance with the typical amortization method described above), the Department agrees not to oppose VMPD's request for adjustment of such described changes provided that such request is in accordance with traditional ratemaking principles and procedures utilized in Vermont.

5. Docket No. 5762. The Department acknowledges receipt and agrees not to oppose the terms of resolution of Docket No. 5762, involving Mr. and Mrs. Hurley Cavacas, as set forth in the letter dated November 3, 1998 from counsel for VMPD to Mr. and Mrs. Cavacas, the terms of which were accepted by Mr. and Mrs. Cavacas on November 23, 1998 (with the exception that the Cavacas deleted the word "second" with regard to their provision of a mortgage for security, which deletion is acceptable to VMPD). However, should that resolution, or any of its terms, not come to fruition, the Parties reserve all

rights with respect to Docket No. 5762. Except with respect to Docket No. 5762, and then only to the extent that VMPD or its acts cause the Cavacases to be unable to obtain a fuel-switch, the Parties agree that the establishment, funding, and support of the EEU in accordance with the MOU, the attachments thereto, and this bilateral agreement, if approved in their entirety by the Board, shall be considered to resolve all claims, based on actions or failures to act prior to January 1, 2000, that VMPD failed to satisfy its DSM obligations to customers under 30 V.S.A. §§ 218c, 218b; the Board's orders in Docket Nos. 5270 or 5330; or any requirements to plan for and conduct System-wide Programs contained in a Board order specific to VMPD or any agreement between VMPD and the Department. Except with respect to Docket No. 5762, and then only to the extent that VMPD or its acts cause the Cavacases to be unable to obtain a fuel-switch, it is the intention of VMPD and the Department that the Board's approval of the MOU and this bilateral agreement shall preclude any party from claiming, or the Board from finding or concluding, that VMPD has, at any time prior to January 1, 2000, failed to satisfy its statutory, regulatory, or contractual obligations to undertake or to implement System-wide Programs. Notwithstanding the foregoing, the Parties recognize that the MOU and this bilateral agreement, or any Board approval thereof, do not bind the Cavacases, who are not party to this docket, MOU or bilateral agreement.

6. **Bottom-Line Settlement.** The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix U. Exhibit DPS-MOU-21: The BED-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND THE CITY OF BURLINGTON ELECTRIC DEPARTMENT

This bilateral agreement entered into by and between City of Burlington Electric Department ("BED") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the DPS and BED, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including BED, to perform least cost distribution planning ("Distributed Utility Planning" or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except in this bilateral agreement the term "Parties" shall mean the DPS and BED.

1. BED agrees to commit $410,000 for calendar year 2000 to fund Core Programs within its service territory, and otherwise, whether those programs are delivered by BED, the EEU or a subcontractor of either. Of this amount, $5,353 is specifically dedicated to funding BED's share of the Emerging Markets Program. BED agrees to commit more funds if necessary to meet its obligations with respect to delivery of the Core Programs within its service territory. The Department agrees that BED may be able to meet its obligations with respect to delivery of the Core Programs within its service territory for less than $410,000 in calendar year 2000, or for less than the established budget for any subsequent year. BED acknowledges and agrees that a significant objective of the Core Programs is to maximize the acquisition of energy efficiency resources given the budgets provided. Notwithstanding paragraph 57 of the MOU, BED shall file proposed budgets for delivery of the Core Programs within its service territory for years 2001 and 2002 as part of its filing under paragraph 2, below.

2. The Department agrees to make a presumption that BED should have the right to implement the Core Programs in its service territory, subject to DPS and Board review of a BED proposal which shall be filed by the deadline set for responses to the request for proposals ("RFP") for the EEU.

a. Such BED proposal shall:

i. List the Core Programs BED proposes to implement.

ii. Describe in detail, subject to subparagraph 2b below, how BED intends to implement those programs.

iii. Notwithstanding paragraph 26 of the MOU, state whether BED proposes that the "C&I Customer Credit Program" described in such paragraph 26 should be implemented within BED's service territory and, if so, describe in detail how BED proposes to implement such program.

iv. Describe how BED will coordinate with the EEU.

v. Describe how BED will ensure consistency of program delivery between itself and the EEU.

vi. Include an itemized budget for implementation which includes, at a minimum:

(1) payments for the Emerging Markets Program;

(2) payments for programs BED chooses not to deliver; and

(3) payments for administrative and fixed costs of the EEU.

vii. Explain how the funds to implement the Core Program or Programs and contributions to the EEU are proposed to be secured and managed by BED. BED and the DPS agree that, to the greatest extent feasible, BED will use existing sources to fund its implementation of Core Programs and contributions to the EEU.

viii. Include proposed budgets for 2001 and 2002.

ix. Include a proposal for how BED will evaluate and report on its performance in implementing the Core Programs.

x. Include a proposal for how BED's performance will be reviewed and evaluated by the Board, including a specific term after which a thorough

review will be conducted and a Board decision about renewal of BED's approval to implement Core Programs will be made.

b. BED's proposal shall be made with as much specificity as possible based upon information reasonably available to BED at the time of the filing. To the extent detailed numbers or specifics of program implementation are not reasonably available, BED will identify the process it will use to refine budgets and respond to specific program features, and will identify the principles it will use in making such decisions.

c. The Department shall have the opportunity to review BED's proposal and provide comments and recommendations to the Board.

d. This paragraph 2 shall apply to BED notwithstanding paragraph 6 of the MOU.

e. The process and presumption set forth in paragraphs 2 through 4 of this bilateral agreement shall apply to any future Statewide Program approved by the Board for the EEU, and BED shall file a proposal in accordance with this paragraph within 60 days of such Board approval. A copy of BED's proposal shall be sent to the DPS and the EEU, which shall have the opportunity to provide comments and recommendations to the Board.

3. The Board, after notice and opportunity for hearing, shall approve BED's proposal if it finds that the anticipated benefits of BED's delivery of Core Programs within its service territory outweigh the risks or potential inefficiencies of such delivery. In reviewing BED's proposal, the Board shall consider at least the following:

a. The commitment and capability of BED to implement programs;

b. The extent to which BED customers will be afforded Core Program services comparable to other utility customers in the state;

c. The preservation of administrative efficiencies and program benefits of statewide delivery, giving due consideration to the benefits of BED delivery within its service territory; and

d. The adequacy of BED's proposed budgets and allocations. The Department agrees that the funding level committed to in paragraph 1, above, for calendar year 2000 is adequate and will not contest the same before the Board.

4. The Board may approve BED's proposal with modifications or conditions. If the Board approves BED's proposal, the Board shall take all appropriate steps to assure that the programs are properly implemented and meet standards equivalent to those for the EEU.

5. BED shall be invited to participate in all relevant advisory committees or subcommittees appointed by the Board and/or the EEU, including committees created for the market segments that BED proposes to service, and agrees to implement Core Program modifications as they are developed and adopted by the EEU under paragraph 4 of the MOU.

6. In its DSM implementation efforts other than implementation of any Core Programs approved for delivery by BED in accordance with paragraphs 1 through 4 above, BED shall remain subject to the provisions of 30 V.S.A. § 218c and Docket No. 5270, and traditional regulatory review of its DSM expenditures; however, with respect to implementation of Core Programs, BED shall only be subject to the same performance standards as the EEU in addition to traditional regulatory review of those expenditures.

7. For the purpose of Core Program implementation, BED shall have access to any intellectual property, including but not limited to logos, databases, trademarks, service marks, copyright material, computer software, surveys, survey results and program designs acquired by the EEU for use in Vermont and necessary to the success of the Core Programs and/or any other state-wide program approved by the Board for EEU implementation. BED shall have a right to such material subject to an agreement with the EEU defining the terms and conditions of such use which shall include a condition

that such materials shall be used only in a manner consistent with the Core Programs' use of those materials.

8. BED shall have a position on the "Transition Working Group," and the DPS and BED agree to work in good faith to identify and define any aspects of BED's transition to the EEU that may differ from the transition plan as it would apply to other utilities. These unique transition plan features will be included as part of BED's filing under paragraph 2 above.

9. For reporting purposes, savings from any Core Programs implemented by BED shall be credited towards both BED's and the EEU's performance standards.

10. The effectiveness of this Agreement and the MOU in binding BED in any regard shall be contingent upon a finding by the Board that it is reasonable for BED to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding BED and shall not bind the Department with respect to BED.

11. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have to right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

12. The Parties agree that the MOU and this bilateral agreement resolve all issues raised to date by BED in this proceeding. Accordingly, the Parties agree that BED shall not seek the admission, into the record of this docket, of any prefiled testimony and exhibits not

made part of the record during the Phase I technical hearings in this docket. This paragraph shall not preclude BED from raising issues that may arise subsequent to the Board's order approving the MOU and this bilateral agreement.

Appendix V. Exhibit DPS-MOU-22: The IBM-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND INTERNATIONAL BUSINESS MACHINES CORPORATION

The following document records the agreement between the Department of Public Service (the "Department") and International Business Machines Corporation. ("IBM") regarding the above-captioned proceedings.

1. Core MOU. IBM and the Department agree that this bilateral agreement incorporates the document which was filed with the Public Service Board on April 30, 1999 and is entitled Memorandum of Understanding and captioned as applying to the above-referenced proceedings ("MOU"). Said MOU sets forth the agreement of the Department and IBM, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). It is the purpose of this document to supplement the MOU and to record specific terms, provisions, and conditions with respect to IBM. Terms defined in the MOU shall have the same meaning when used herein, except that the term "Parties" in this bilateral agreement means the Department and IBM.

2. C&I Customer Credit Program. IBM and the Department agree that, in addition to the Core Programs to be offered by the EEU, the EEU shall offer a "C&I Customer Credit Program," the terms of and eligibility for which are set forth in Attachment A to this bilateral agreement. Energy savings obtained through such Program shall be attributable to the EEU. In accordance with paragraph 26 of the MOU, the C&I Customer Credit Program shall be available to all eligible customers in the territory of each DU which signs the MOU.

3. Copy of Annual EEU Re-allocation Request. The Parties agree that the EEU shall send to IBM a copy of the annual EEU request described in ¶ 19 of the MOU, at the same time the EEU files such request with the Board and sends a copy to the Department and each DU. The Parties also agree that the EEU should send a copy of such request to any other party to this docket which requests in writing to the EEU to be sent such a copy.

4. Resolution of All Issues. The MOU and this bilateral agreement resolve all issues raised by IBM in this proceeding. IBM agrees not to challenge the bilateral agreement between the Department and GMP filed in this docket on April 30, 1999 along with the MOU.

5. Bottom-Line Settlement. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement, including Attachment A hereto, as written and in their entireties, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

ATTACHMENT A TO DPS-IBM BILATERAL

C & I CUSTOMER CREDIT PROGRAM

General: The C&I Customer Credit Program (Program) recognizes that certain commercial and industrial customers already may be committed to, and possess considerable expertise regarding, energy efficiency. These customers actively practice energy efficiency because it makes business sense for them to do so. The C&I Customer Credit Program provides these customers with a choice as to whether they wish to remain eligible to participate in the Statewide Core Programs or whether they prefer to forego that eligibility and pursue electric energy efficiency measures on their own.

Eligibility: Commercial and industrial customers that meet the following criteria are eligible for this program:

1. the customer has never accepted financial incentives from a Vermont utility sponsored DSM program; and

2. the customer has demonstrated a commitment to pursuing cost effective energy efficiency on its own by:

   (a) certification under ISO (International Standards Organization) standard 14001; and

   (b) becoming a partner in the Climate Wise program sponsored by the U.S. Department of Energy and the U.S. Environmental Protection Agency.

If the ISO standard or Climate Wise program changes, revised eligibility standards may be negotiated. A customer that elects to participate in this program will not be eligible to participate in the Statewide Core Programs sponsored by the Energy Efficiency Utility ("EEU").

Program Design: Eligible customers that elect to participate in the Program will receive a refund for all "Qualified Expenses;" provided that total "Qualified Expenses" in any period may not exceed 100 percent of "Available Funds," as defined below.

For purposes of the Program, "Qualified Expenses" are defined as follows:

For "market-driven" projects:

One hundred percent (100%) of the incremental costs associated with identifying, investigating, analyzing, designing, implementing and/or installing societally cost effective electric efficiency projects at facilities owned, operated or controlled by the customer. These costs may include the customer's internal design and engineering labor, outside design, engineering and installation labor and equipment costs; provided however, that Qualified Expenses for costs other than incremental installation labor and equipment costs shall only be eligible for refund up to either 25% of the total incremental installation labor and equipment costs, or actual non-installation-labor and non-equipment incremental costs, whichever is less.

Incremental costs are defined as the difference between the actual cost of the equipment, installation labor, engineering, design, and commissioning and the cost of the equipment, installation labor, engineering, design, and commissioning that would meet the current design and construction standard practice (the "baseline cost").

For "retrofit" projects:

A portion of the total costs associated with identifying, investigating, analyzing, designing, implementing and/or installing societally cost effective electric efficiency retrofit projects at facilities owned, operated or controlled by the customer. These costs may include the customer's internal design and engineering labor, outside design, engineering and installation labor, and equipment costs; provided however, that Qualified Expenses for costs other than installation labor and equipment costs shall only be eligible for refund up to either 15% of the total incremental installation labor and equipment costs, or actual non-installation-labor and non-equipment incremental costs, whichever is less.

The portion of the above mentioned costs included as "Qualifying Expenses" shall be the amount necessary to allow the customer to realize an estimated 18 month simple payback on the customer's portion of the project investment. Payback shall be calculated based on anticipated energy and non-energy benefits, including, but not limited to, reductions in operating and maintenance costs, fossil fuel savings, electricity savings, environmental compliance cost savings, labor savings, and saving from avoidance of future equipment replacements.

Provided, however, that in the event the total "Qualifying Expenses" for either a market-driven or retrofit project exceed the net present value of the project's estimated electric avoided cost benefits (based on the statewide avoided costs of

electricity), the maximum rebate amount will be capped at the total net present value of the project's electric avoided cost benefits.

The determination of whether the project represents a "market driven" or "retrofit" project, the electric avoided cost benefits, the design and construction standard practice, and the amount needed to result in an 18 month payback on retrofit projects, shall be made by the EEU, in consultation with the customer. In the event the customer disputes any EEU determination, the customer may make a complaint to the Contract Administrator, who shall seek to resolve the complaint through negotiation. If no such resolution occurs within thirty (30) days, the Contract Administrator shall refer the complaint to the Board for review of the EEU's decision.

Available Funds: "Available Funds" are defined as follows:

> Seventy percent of the funds the customer has paid, or is projected to pay, to its distribution utility for EEU funding, for either the immediately preceding calendar year and the current calendar year, or the current calendar year and the immediately following calendar year, less any disbursements already obtained by the customer drawn on the same years' funds.

For purposes of the Program it is assumed that a customer's future year kWh consumption will be equal to the latest full calendar year kWh consumption, unless the customer and the EEU mutually agree on a different projection.

Any "Available Funds" not applied for by a customer prior to the end of the calendar year following the year funds are paid to the distribution utility will not be available to the customer under this Program.

Program Implementation: No later than February 28th (29th if a leap year) of each calendar year, any customer may notify the EEU, in writing, that it intends to participate in the Program in that calendar year. In its written notice, the customer must demonstrate compliance with the eligibility criteria. Failure to make such notification will preclude the customer from receiving Program funds in that calendar year. The EEU may waive this notification requirement under special circumstances.

At any time following proper notification to the EEU of its intent to participate in the Program, a customer may submit a description of a cost effective energy efficiency project to the EEU along with a statement of whether the project is market-driven or retrofit; a list of Qualified Expenses associated with the project

along with supporting documentation; an estimate of energy and non-energy savings associated with the project and the project's expected lifetime; and a description of the "baseline" if a market-driven project.

The EEU will review the customer's submission, screen it for societal cost-effectiveness using the statewide screening tool and avoided costs, and notify the customer in writing within 30 days if: the project meets the cost-effectiveness screening criteria; the EEU needs additional data to screen or review the project; the EEU agrees with all the customer's assumptions and estimates; the EEU disagrees with any or all customer assumptions or estimates; and/or the EEU needs additional time to review the submission. In the event that any disagreements arise between the EEU and the customer, both parties will work in good faith to resolve the disagreements. The customer will provide to the EEU all necessary data to review its assumptions and estimates including, but not limited to, workpapers, drawings, contractor estimates, operating data and equipment specifications. The EEU will then make a final determination of the eligibility of the project, and the amount of Qualifying Expenses. In the event the customer disputes any EEU determination, the customer may make a complaint to the Contract Administrator, who shall seek to resolve the complaint through negotiation. If no such resolution occurs within thirty (30) days, the Contract Administrator shall refer the complaint to the Board for review of the EEU's decision.

If a customer chooses, it may proceed with a project prior to approval by the EEU, at its own risk.

Once the EEU approves a project, and the installation is complete and verified by the EEU, based upon a verification method mutually agreed to between the EEU and the customer, the EEU will issue a rebate payment to the customer.

The EEU will be obligated to maintain customer confidentiality under the same terms as are established for customer information provided by distribution utilities to the EEU. At the request of a customer, the EEU may execute a separate confidentiality agreement, upon terms mutually acceptable to the customer and the EEU, covering any aspect of a proposal submitted to the EEU for which the customer seeks special confidentiality treatment.

Appendix W. The Barton-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND BARTON VILLAGE, INC. ELECTRIC DEPARTMENT

This bilateral agreement entered into by and between Barton Village, Inc. Electric Department (the "Municipal Utility") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the Department and the Municipal Utility, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including the Municipal Utility, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except that in this bilateral agreement the term "Parties" shall mean the Municipal Utility and the Department.

1. The Department and the Municipal Utility agree that the funding for the EEU from within the service territory of the Municipal Utility shall be as follows for the first three years: for year 2000, $29,276; for year 2001, $36,961; for year 2002, $43,304.

2. With reference to paragraph 22 of the MOU, the Municipal Utility's 1999 budgeted figure for DSM as provided by the Municipal Utility to the Department on March 8, 1999 is $0.00

3. The Municipal Utility has obtained financing for certain DSM measures through the issuance of long term indebtedness pursuant to the Order issued by the Vermont Public Service Board in Docket 5951 (which also included approval of financing for distribution system work). Provisions of the bond covenants preclude use of these funds outside of the Municipal Utility's service territory.

4. The Municipal Utility will continue to use for DSM such remaining bond proceeds as were originally intended for DSM purposes, provided that such use does not conflict with the purposes of the EEU, the Core Programs, or the terms of the MOU. The Parties agree to work together in good faith to reach a mutually acceptable disposition of any bond proceeds originally intended for DSM purposes which remain after the Municipal Utility completes its implementation of the DSM programs which are being funded from the bond proceeds.

5. The Municipal Utility will continue amortization of accumulated DSM expenditures made from the bond proceeds for whatever period of time is necessary to meet its obligations incurred under the bond financing, consistent with the expenditures made by the Municipal Utility for DSM purposes.

6. The Parties agree that, for purposes of paragraph 22 of the MOU, the Municipal Utility's amortization amounts of DSM expenditures made from the bond proceeds shall not be considered costs displaced by the benefits charge described in paragraph 21 of the MOU.

7. Notwithstanding the provisions of paragraph 51 of the MOU, and unless or until such time as a final result is reached in Docket 5611 (or a proceeding which includes fully equivalent scope and substance) that replaces the 5% externalities adder derived in Docket 5270, the Municipal Utility may use the 5% externalities adder as established by the Board in Docket 5270, instead of the 0.7 cent/kWh adder set by the MOU, for any System-wide Programs which the Municipal Utility chooses to voluntarily provide pursuant to paragraph 13 of the MOU. However, in the event that the Municipal Utility becomes a subcontractor to the EEU, pursuant either to paragraph 6 or 7 of the MOU, for one or more System-wide Programs approved by the Board for EEU implementation, this paragraph shall not relieve the Municipal Utility of the obligation to deliver those EEU programs in the same manner, and using the same avoided costs

including externalities, that would apply if those EEU programs were delivered directly by the EEU or any other subcontractor to the EEU.

8. In accordance with paragraph 51 of the MOU, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described in the MOU, or by an Order of the Board, the Municipal Utility will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

9. Notwithstanding any contrary provisions contained in paragraph 50 of the MOU, the Municipal Utility shall have the option, in delivering voluntary System-wide Programs, which are not the Core Programs or other System-wide Programs approved by the Board for implementation by the EEU, to propose and use the Municipal Utility's own figures for avoided T&D capacity costs. This option on the part of the Municipal Utility shall not affect the ability of the DPS to challenge such alternative figures, except that the Municipal Utility shall be allowed to use its own figures unless or until directed to do otherwise in a final order issued by the PSB.

10. The effectiveness of this Agreement and the MOU in binding the Municipal Utility in any regard shall be contingent upon a finding by the Board that it is reasonable for the Municipal Utility to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding the Municipal Utility and shall not bind the Department with respect to the Municipal Utility.

11. Except in acting to seek PSB approval of the MOU and this bilateral agreement, the provisions of paragraph 66 of the MOU shall not create an obligation on the part of the Municipal Utility to take action, but shall apply when the Municipal Utility chooses to act or communicate or is otherwise acting or communicating with respect to or concerning matters which reasonably could affect the approval, establishment, funding

and implementation of the EEU in accordance with the MOU and this bilateral agreement.

12. The Parties agree that the Municipal Utility's agreement to the MOU does not give rise to DUP obligations beyond the obligations set forth in 30 V.S.A. § 218c and the obligations and principles set forth in the Board's Order in Docket 5270. The preceding sentence shall not be construed to exempt the Municipal Utility from an otherwise applicable future Board Order regarding obligations of the Municipal Utility as to DUP.

13. To the extent the Municipal Utility uses postcard or "printed through the envelope" billing and does not send bill inserts to customers, the Parties agree that, instead of the bill insert agreed upon in paragraph 25 of the MOU, the Municipal Utility will publish in a newspaper of general circulation within its service territory a notice developed by mutual agreement of the Municipal Utility and the DPS explaining the reasons for the line item charge for the EEU, the nature and purpose of the EEU, and such other matters as are relevant to the charge. Any such Municipal Utility will make its list of customer names and addresses available to the EEU for mailings by the EEU.

14. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

Appendix X. The WEC-DPS Bilateral Agreement

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE AND THE WASHINGTON ELECTRIC COOPERATIVE, INC.

The following document records the agreement between the Department of Public Service (the "Department" or "DPS") and the Washington Electric Cooperative, Inc. ("WEC") regarding the above-captioned proceedings.

1. Core MOU. WEC and the Department agree that this bilateral agreement incorporates the document which was filed with the Public Service Board on April 30, 1999 and is entitled Memorandum of Understanding and captioned as applying to the above-referenced proceedings ("MOU"). Said MOU sets forth the agreement of the Department and WEC, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including WEC, to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). It is the purpose of this document to supplement the MOU and to record specific terms, provisions, and conditions with respect to WEC. Terms defined in the MOU shall have the same meaning when used herein, except that the term "Parties" in this bilateral agreement means the Department and WEC.

2. Funding. The Parties agree as follows with respect to funding:

   a. Subject to the obligations cited in paragraph 6g of the MOU, WEC will directly administer and will budget the following annual amounts for the programs described:

WEC's residential new construction program	$55,000
WEC's retrofit residential program	$100,000

   By "WEC's residential new construction program," the Parties mean WEC's residential construction program design (energy assessment fee), approved by

the Board in April 1994 and modified in January 1998. By "WEC's retrofit residential program," the Parties mean two program designs approved by in its order of January 30, 1992 in Docket 5270-WEC-2: the residential moderate use/direct install program and the residential high use/energy improvement services program. For reporting purposes, savings from the above-described programs shall be credited toward the EEU's performance standards, as well as toward WEC.

b. In addition to the foregoing, the Parties agree that WEC shall fund the EEU budget in the following amounts for the first three years: for year 2000, $15,000; for year 2001, $50,000; and for year 2002, $75,000.

3. Acceleration of DSM Amortization Schedules. WEC proposes to accelerate its DSM amortization schedules. Subject to review of the specific terms requested by WEC, DPS agrees not to oppose an accounting order requested by WEC to accommodate such acceleration and to modify WEC's accounting treatment of DSM investments to a five-year basis. The effect of the acceleration would be to increase expense in the years 2000-2004 by an amount totaling approximately $205,000, or an average amount of approximately $40,000 per year. DPS's agreement to this acceleration does not constitute agreement that WEC's revenues must be increased by any particular amount.

4. Resolution of All Issues. The Parties agree that the MOU and this bilateral agreement resolve all issues raised to date by WEC in this proceeding. Accordingly, the Parties agree that WEC shall not seek the admission into the record of this docket of its prefiled testimony and exhibits filed in this docket.

5. Bottom-Line Settlement. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties'

agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.