

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 5980

Investigation into the Department of Public        )  
Service's proposed Energy Efficiency Plan        )

Order entered: 4/29/99

**STATUS CONFERENCE MEMORANDUM AND PROCEDURAL ORDER**  
**AND NOTICE OF HEARING**

On April 14, 1999, a status conference was held. The parties described in general terms the progress they have made in negotiating a comprehensive resolution of this docket. The recurring motif in their comments was unmistakable: there are many and complex issues at play in this case and that a settlement will involve much "give and take" among the parties. It is this complexity that has caused the negotiations to take more time than had originally been anticipated. However, the parties are optimistic that a settlement will emerge.

Their optimism is such that they had not asked for another extension of the deadline for the filing of proposed procedural schedules and lists of issues to be litigated. Those filings had been made the day before, as required. Review of the filings and the discussion at the status conference reveal that there is some disagreement among the parties as to the scope of the Phase II proceedings. What follows here is my assessment of the Board's instructions for the next phase and a catalogue of issues that may require resolution.

**A. The Phase I Order**

The Board's Order of January 19, 1999, ("Phase I Order") and the accompanying Conclusions and Recommendations of the Hearing Officer provide clear guidance for the conduct of the Phase II proceedings. The Board accepted the overall principal advocated by the Hearing Officer, ". . . 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."<sup>1</sup> The Board also accepted the Hearing Officer's conclusion, ". . . that the statewide delivery mechanism must be an entity focused on maximizing cost-effective energy efficiency savings and independent of distribution utility control."<sup>2</sup> The Board concluded that, under current law, it has jurisdiction to approve the creation of a statewide entity for the delivery of energy efficiency programs and to approve funding for the entity and its programs.<sup>3</sup>

However, because several parties contended they had not had an opportunity to present evidence and testimony that might suggest alternatives to some proposals advanced by the DPS, the Board did not adopt the Hearing Officer's other specific recommendations and "detailed findings on specific program design and cost-effectiveness issues."<sup>4</sup> The Board deferred those details for further review in Phase II. But, taking note of the extensive record in Phase I and the attention the parties had already given to this proposal, the Board observed that "we do not anticipate a need for an extensive discovery period and opportunity to file new evidence in Phase II."<sup>5</sup>

The Board then discussed, in broad brush strokes, the management structure that "a coordinating mechanism that purchases energy efficiency services on a statewide basis as an agent of the distribution utilities and their customers" should have.<sup>6</sup> The Board outlined a possible model for that management committee, to be considered in Phase II, and instructed the Hearing Officer ". . . to address these structural and management issues as an initial order of business in those hearings."<sup>7</sup>

Finally, the Board addressed the scope of issues to be addressed in Phase II. It observed that, while the evidence in Phase I demonstrated ". . . that the coordinated, state-wide delivery of efficiency programs is highly likely to provide significant benefits for Vermont's

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1. Phase I Order at 44.

2. *Id.*

3. *Id.* at 49-53.

4. *Id.* at 44.

5. *Id.* at 45.

6. *Id.* at 53.

7. *Id.* at 54.

ratepayers, there are still many technical details that remain to be examined."<sup>8</sup> The Board indicated that such issues may include, among others, the following:

- *Avoided Generation Costs.*
- *Avoided Transmission and Distribution Costs.* How should these be calculated? On a state-wide basis, or are there meaningful differences among geographic areas that should be recognized?
- *Program Design.* Are there changes that can be made to the DPSs proposed programs that will improve their efficacy and cost-effectiveness?
- *Distinction between Core and Non-Core Programs.* Is this distinction sensible? Should distribution utilities retain any responsibility for DSM at all, or should the efficiency utility deliver the full range of DSM services?
- *Energy Efficiency and Customer Service.* Related to the core/non-core issue is the question of whether utilities that want to provide DSM services and have demonstrated superior performance in doing so should be permitted to continue delivering those services. If so, should program design and implementation be coordinated with the state-wide efficiency utility? Also, would such arrangements affect the allocation of Efficiency Utility ("EU") funding responsibilities among utilities, as well as the geographic targeting of program investments? If so, how?
- *Statewide Programs Funding.* What is the appropriate level of funding for the statewide programs? How should those costs be allocated among the states distribution utilities? Should there be a reduced responsibility for utilities that have demonstrated superior performance in acquiring DSM resources in the past? What constitutes "superior performance"?
- *Impacts upon Integrated Resource Planning.* What effect will the creation of an efficiency utility have upon utilities legal obligations to develop integrated resource plans ("IRPs") and to provide least-cost services to their customers?<sup>9</sup>

## B. The Scope of Phase II

With this guidance in hand I invited the parties to propose litigation schedules and provide a specific list of issues to be resolved in Phase II.<sup>10</sup> The following parties responded: the City of Burlington Electric Department ("BED"), Central Vermont Public Service Corporation ("CVPS"), Green Mountain Power Corporation ("GMP"), the 14 Municipal

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8. *Id.*

9. *Id.* at 54-55.

10. Order of 1/29/99.

Utilities, and the Department of Public Service ("Department" or "DPS"). They addressed the issues identified in the Board's Phase I Order, suggested specific approaches to those issues, and proposed several new matters for consideration.

The Department states simply that Phase II should address only the issues identified by the Board in the Phase I Order.

The utilities, however, believe that there is a broader set of issues to be resolved, summarized as follows:

1. Is it necessary to develop new estimates of energy efficiency potential in Phase II in light of the Board decision to use a five percent "add" to account for externalities and to consider an updated range of avoided cost estimates?
  - a. How will the cost-effectiveness of programs recommended by the DPS be affected by adjustments to the externalities adder and by testing them against a range of avoided costs, as set out in the Board's Order in Docket 5854?
  - b. If some components of the core DSM programs are sensitive to such adjustments, can a reassessment of energy efficiency potential or program cost-effectiveness be limited to the programs affected significantly?
2. What generation avoided costs should be used: statewide, area specific, or utility specific?
3. Should the Department be required to submit evidence addressing the total costs (including EU costs, distribution utility costs, and DPS costs) associated with implementing the efficiency utility?
4. Should the Department estimate total statewide DSM expenditures under its plan for an efficiency utility and compare those total costs to anticipated levels in the absence of its plan?
5. The Structure of the Efficiency Utility:
  - a. What should be the specific responsibilities of the EU, addressing specifically the responsibilities identified by the Board in the Phase I Order (at 53-54)?
  - b. What should be the composition of the EU management structure, addressing specifically the structure suggested by the Board in the Phase I Order (at 53-54)?
  - c. Who are the "principals" to whom the EU will be legally responsible and to what extent will any entities other than "principals" have authority to direct, govern, or supervise the EU's conduct?
  - d. How will the EU (or EUs) be selected? Should there be only one EU?
  - e. What regulatory process will be established to ensure that the EU performs effectively, using the funds provided by consumers effectively? What will be the roles of the PSB, DPS, and distribution utilities in creating, governing, regulating, and coordinating with the EU?

- i. Should the DPS retain its traditional "watch-dog" role and provide oversight of the EU? Does this create a conflict of interest for the DPS, if it is also designing EU DSM programs, determining their cost-effectiveness, and supervising their delivery?
    - ii. If the DPS assumes planning responsibility for EU program design and cost-effectiveness screening matters, should the PSB appoint an independent counsel to represent the interests of ratepayers in Phase II and other subsequent proceedings?
  - f. What financial integrity or other standards should be imposed on the EU to ensure its ability to refund or otherwise compensate consumers or distribution utilities for any expenditures determined to be imprudent, unnecessary, wasteful, non-cost-effective, or not used and useful?
  - g. What mechanisms (*e.g.*, indemnification and bonding requirements) should be established to ensure that distribution utilities are not at risk for the costs or failures of the EU, including any harm caused to customers, the electric system, the public, or the utilities?
  - h. What plans should be made to address energy efficiency for natural gas and unregulated energy sources (*e.g.*, oil, wood, propane, and coal)?
6. EU Operations:
  - a. May distribution utilities propose to become or act as the EU, inside and outside their own service territories?
  - b. What will be the relationship of the EU to the local distribution utilities? How can this relationship be exploited to maximize the overall effectiveness of EU and distribution utility energy efficiency service programs?
  - c. Will the EU be authorized to implement and enforce an "energy services charge" to be paid by customers receiving efficiency measures?
  - d. What efficiency markets should the EU address?
  - e. Should there be a distinction between core and non-core programs?
  - f. What regulatory performance standards should be imposed on the EU?
  - g. How will EU planning be accomplished?
7. EU Funding:
  - a. How should the EU be funded? What mechanism (for example, a "wires" charge) should be employed to raise the funds needed to fund EU operations and programs?
  - b. What is the necessary and appropriate funding level for the EU?
  - c. How will EU funds be administered?
  - d. How will future EU budgets be established?
  - e. What process will be used to review and approve EU budgets and spending levels, initially and in the future?
  - f. How will spending levels be reconciled with goals for achieving cost-effective efficiency savings in Vermont during relevant budget periods?
  - g. How will the funds collected from each service territory be balanced with the services provided to consumers in each service territory?

8. Impacts of the EU on the Operations of Distribution Utilities:
  - a. How will distribution utilities be assured full cost recovery for all costs associated with the EU, including any assessments to fund the EU and any costs incurred in providing information, coordination, or other services to the EU?
  - b. Should distribution utilities be permitted to accrue ACE on energy savings attributable to the EU or to otherwise account for revenue erosion attributable to EU activities in distribution utility service territories?
    - i. If ACE is eliminated, what ratemaking process will allow distribution utilities to recover costs and earn allowed returns?
  - c. For distribution utility rate making purposes, how should the Board treat stranded DSM program costs, if any, associated with the creation of the EU?
  - d. How should EU budgets be allocated among the customers of the distribution utilities?
  - e. What will be the nature and extent of any distribution utility rate impacts associated with proposed EU spending levels?
9. Distribution Utility Obligations and Responsibilities:
  - a. What will be the remaining regulatory or legal responsibilities, if any, of distribution utilities in providing energy efficiency programs or services after the EU has been established?
    - i. What, if any, distinction should be made between DSM provided pursuant to a utility's least-cost integrated resource plan and DSM services provided for the purposes of distributed utility planning?
    - ii. To what extent will the EU have complete and sole responsibility for DSM programs and measure delivery in all markets in which it participates?
    - iii. Should the EU be fully responsible for all statewide DSM program delivery, including both the core programs set forth in the Department's original plan and all other DSM programs?<sup>11</sup>
10. Integrated Resource Planning:
  - a. Should distributed utility planning principles and guidelines be addressed in this proceeding or in a separate proceeding?
  - b. What avoided transmission and distribution costs should be used for distributed utility planning?
  - c. What procedural reforms (with respect to IRP) should be implemented before utilities are expected to perform distributed utility planning?

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11. Along these lines, BED suggested that "The Board should also determine the extent to which a qualified utility can determine the funding sources for the statewide programs, and the ability of such a utility to retain funds raised through a wires charge for core and other DSM programs within its service territory." BED Comments, 4/13/99, at 3 (Issue #4). I presume that "a qualified utility" in this context is one that has obtained Board approval to deliver efficiency programs in its own service territory. If so, the criteria that a company must meet in order to be deemed a "qualified utility" will also have to be determined.

11. How will the transition from the existing DSM delivery structure to the new structure be effected?
  - a. How will the EU be created (what process over what time frame)? Should the DPS prepare a specific transition plan to coordinate the establishment of the new DSM delivery system?
  - b. What will be the obligations of distribution utilities during the transition to an EU?
  - c. Will distribution utility DSM infrastructure and expertise, including personnel, be utilized by the EU during the transition? If so, how?
  - d. What will be the costs of the transition? How will those costs be allocated among distribution utilities?
  - e. What additional Board proceedings are necessary to ensure an effective transition?

I am prepared to winnow down this list of issues. It goes well beyond the Board's expectations in many respects but, in others, is merely repetitive of the Board's directives in its Phase I Order. In any event, it is not necessary to resolve them all in this phase.

Even so, I recognize that this is a complex case and that some of these issues are interrelated. I ask that the parties review this list, confer, and then inform me by May 5, 1999, as to which issues they agree should be addressed and which issues they dispute. I suggest dividing the issues into two categories: (1) those issues upon which the Phase I Hearing Officer made recommendations but which parties believe had been deferred to Phase II; and (2) those issues related to the EU's management structure and to the implementation of the new approach to the delivery of energy efficiency services.

The Phase I record is quite extensive, and it should not be necessary in Phase II to introduce significant amounts of new evidence. The Board's Phase I Order speaks clearly to this point.<sup>12</sup> Therefore, any party that wishes to file additional testimony prior to hearing in Phase II shall file by May 5<sup>th</sup> a general description of the substance and intent of such testimony. In preparing a final procedural schedule and scope for Phase II, I will determine whether the additional testimony proposed is necessary.

I will convene a status conference, pursuant to 30 V.S.A. §§ 8, 10 and 209, on Friday, May 7, 1999, to consider the filings and to set a procedural schedule. At that time, I will also receive a report on the status of the settlement negotiations. The hearing will be held at the

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12. Phase I Order at 45.

Public Service Board Hearing Room, Third Floor, Chittenden Bank Building, 112 State Street,  
Montpelier, Vermont, commencing at 9:30 A.M.

SO ORDERED.

Dated at Montpelier, Vermont, this 29<sup>th</sup> day of April, 1999.

s/ Frederick W. Weston, III

Frederick W. Weston, III  
Hearing Officer

OFFICE OF THE CLERK

FILED: April 29, 1999

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

*Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board of any technical errors, in order that any necessary corrections may be made.*