VERMONT

PUBLIC SERVICE DEPARTMENT

Annual Report on the Public Advocacy of the Vermont Department of Public Service Pursuant to Act 130, Section 5f –

A Report to the Vermont House Committee on Commerce and Economic Development, the House Committee on Natural Resources and Energy, the Senate Committee on Finance, and the Senate Committee on Natural Resources

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January 2017

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Introduction

Pursuant to Act 130 Section 5f, the Department of Public Service is pleased to present the first annual report of major activities at the Department. As this is the first of its kind, we cover more than just proceedings concluded this year, and generically summarize the major utility activities of the last several years, back to 2012, to put this year's report in context.

From this perspective, the Department Advocacy work has saved Vermont ratepayers approximately $44 million over the last several years, and if our recommendations are upheld in the pending Vermont Gas Systems rate case, the savings in this period will be over $56 million.

This year, the Department participated in the review of all actions taken before the Board, which number approximately 1000 applications. Most of these are interconnections under net metering or other energy developments that may have associated aesthetic and siting issues. Several, however, are rate-related and are major proceedings before the Board. It is on the later that this report focuses, although two examples of the former are discussed as well.

In this report, we explain several of the major specific cases we undertook during the past year, and we describe what we accomplished, what we decided and why, and the benefits we derived for ratepayers and the public of Vermont.

Pursuant to the Act, the Attorney General's office (AGO) followed one case (the GMP Base Rate Case) and its assessment is attached as an appendix to this report. In short, the AGO found we represented the public competently and independently, achieving meaningful results for ratepayers. They also found that the current Alternative Regulation process is imposing specific pressures on the Department that should be addressed. We agree there are improvements to be made, which the Department has both identified and is undertaking, but we also believe it is important for all to realize the Alternative Regulation process is the mechanism by which we achieve many important results – including "revenue decoupling." Decoupling results in the elimination of the perverse incentive of utilities to sell more power or fuel, rather than help us achieve our energy and efficiency goals. As such, it is an important tool which must be maintained. Most states have some form of "alternative regulation" as they believe the modified process more efficiently addresses appropriate regulation of utilities in this day and age. We agree, and the benefits and challenges of the alternative regulation process are discussed later in this report.

<u>DPS Mission</u>:

The mission of the DPS is to serve all citizens of Vermont through public advocacy, planning, programs, and other actions that meet the public's need for least cost, environmentally sound, efficient, reliable, secure, sustainable, and safe energy, telecommunications, and regulated utility systems in the state for the short and long term.

This necessarily means we are supporting ratepayers, first and foremost, to ensure efficient and cost effective services, but do so in the context of a regulatory structure that considers sustainability, reliability, safety and environmental impacts. We must also insure our utilities are

compensated for their work fairly and consistently, so that they are healthy and able to serve the consumers, providing efficient, reliable and secure services.

Over the past four years, we have successfully managed this relationship to ensure value for ratepayers and low and stable rates for consumers. The following chart shows, for two major utilities in the state, their applications for rate changes and our response:

Green Mountain Power Rate Case Filing						
		Original Request		After PSD Review		
FY	Case	Amount ($)	%	%	Variance %	Savings
2013	Alt Reg Base Rate Filing	$9,864,000	1.67%	0.40%	-1.27%	$ 7,501,365
2014	Alt Reg Base Rate Filing	$20,922,000	3.81%	2.46%	-1.35%	$ 7,413,307
2015	Traditional Rate Filing	($155,000.00)	-0.03%	-1.46%	-1.43%	$ 7,388,333
2016	Alt Reg Base Rate Filing	$7,021,000	1.26%	0.73%	-0.53%	$ 2,953,278
2017	Alt Reg Base Rate Filing	$19,559,000	3.35%	0.93%	-2.42%	$ 14,129,188
	Total GMP reduction from PSD review					$39,385,472
Vermont Gas Rate Case Filing						
		Original Request		After PSD Review		
FY	Case	Amount ($)	%	%	Variance %	Savings
2014	Alt Reg Base Rate Filing	($4,900,000)	-5.86%	-5.86%	0.00%	$ -
2015	Alt Reg Base Rate Filing	$2,007,875	2.34%	-1.31%	-3.65%	$3,131,942
2016	Alt Reg Base Rate Filing	($755,518)	-0.90%	-3.00%	-2.10%	$1,762,875
2017	*Traditional Rate Filing**	*$11,204,397*	*10.13%*	*-1.03%*	*-11.16%*	*$12,343,640*
	Total VGS reduction from PSD review					$ 17,238,457
	Total reduction from PSD review					***$56,623,928***

***** *This 2017 case is currently pending before the Public Service Board. The savings noted here are DPS's recommendation as of this writing.*

From this, it can be seen that the Department's work has saved ratepayers approximately $44 million to date, and is currently advocating for a total savings of $56.6 million through this year, and we've done so while maintaining reliable and secure service.

Specific Requirements of Act 130

Pursuant to Act 130 of 2016, the Department of Public Service is required to submit annually to the Vermont General Assembly a report addressing the positions taken and the concessions obtained through the advocacy work of the Department. As characterized in the law: "The primary purpose of the reporting requirement … is to help address concerns regarding any potential compromise of the effectiveness or independence of the Department's representation of ratepayers in rate proceedings, including base rate filings under an alternative regulation plan."[1]

Further, the law requires that the Attorney General's Office "monitor and detail at least one rate proceeding annually and make findings and recommendations related to the effectiveness and independence of the Department's ratepayer advocacy." The Attorney General's findings and recommendations are included as an appendix to this report.

Specific requirements of the law include the following:[2]

- A summary of significant cases concluded within the past year;
- The positions taken by the Department of Public Service in those cases;
- A summary of the Department's role and positions with respect to other significant topics addressed by the Department's Public Advocacy Division pursuant to alternative regulation or to litigation before the Public Service Board or other tribunal;
- Specific reference to the Department's duties and responsibilities under Title 30, and explanation of how the Department's positions and activities align with those statutory provisions;
- The terms of any settlement or memorandum of understanding (MOU) negotiated by the Department in such cases, the parties that participated in any settlement or MOU negotiations, and documentation of what the Department was able to negotiate on behalf of residential ratepayers and what the Department conceded that was beneficial to the applicable public service company.

<u>Significant Cases During the Past Year</u>

The following cases were identified by the Department of Public Service as significant cases to report on for the past year. These were:

Three cases reviewed under § 248:

Docket No. 7970 - Vermont Gas Systems (VGS) Addison Expansion Project
Docket No. 8400 – TDI buried transmission line (merchant transmission)
Docket No. 8188 – Cold River Solar

[1] Act 130 of 2016, Section 5f.

[2] In crafting the law, the General Assembly notes that "[t]he Department shall not be required to disclose privileged information in connection with a report submitted under this section…."

One rate design case[3]:

Docket No. 8525 – Green Mountain Power rate design

One base rate filing under an alternative regulation plan

Tariff Filing No. 8618 -- Green Mountain Power base rate filing

One case involving rates for PURPA projects:

Docket No. 8684 – PSB Rule 4.100 rates

And one telephony case:

Docket No. 8390 – FairPoint service quality.

Department's Duties under Title 30

General Provisions

The statutes directing the Department's work are found in Title 30. Section 2(a) directs the DPS to "supervise and direct the execution of all laws" relating to public service entities. Section 2(a)(6) directs the DPS to represent "the **interests of the consuming public** in proceedings to change rate[s] . . . ." Section 2(b) broadens that focus, stating that "In cases requiring hearings by the Board, the Department, through the Director for Public Advocacy, shall represent the **interests of the people of the State,** unless otherwise specified by law."

The duties of the Department of Public Service under Title 30 fall into two broad categories – planning and regulating. Regarding the planning functions, the Department prepares and issues long range plans that guide the evolution of the energy and telecommunications industries in Vermont. The regulatory functions of the Department include representing the public interest (as developed in the various plans) as a party in virtually all cases before the Public Service Board. This report focuses on the participation of the Department in cases undertaken under its regulatory functions.

In its regulatory functions, the Department participates in cases where a party petitions the Board to construct an energy or telecommunications facility, and in cases involving rates charged and services rendered by regulated service providers. The cases involving construction of energy facilities are reviewed under Title 30, Section 248, with the applicant seeking a Certificate of Public Good ("CPG") to build a facility. Rate cases, service quality cases, and other cases are generally brought by a utility wishing to increase its rates, change its services, or undertake another action for which Board approval is required. Additionally, the Department may initiate

[3] The difference between a rate case and a rate design case is that in a rate case, the DPS reviews the costs to be incurred by the company and adjusts all rates by the same amount to allow recovery of those costs. In a rate design case, rates are being adjusted differentially to reflect the contribution of each class of customers to the total costs of the utility. A rate case is supported by a filing detailing the various costs likely to be incurred by the utility and comparing it to historical costs. A rate design case is supported by an "allocated cost of service" study which looks at the characteristics of each customer group to determine the costs that group imposes on the system.

proceedings on its own motion before the Public Service Board, with respect to any matter within the jurisdiction of the Board, and may initiate rule-making proceedings before the Board.

Section 248

A petition for a Certificate of Public Good proceeds under Title 30, Section 248. Pursuant to its broad statutory responsibilities under Title 30, the Department is responsible for representing the interests of ratepayers and, more broadly, the state in reviewing the petition for its consistency with this section.

Pursuant to Section 248(a)(2), before a company can exercise the right of eminent domain or begin site preparation for generation or transmission facilities in the state, the Public Service Board must issue a CPG and must find that the following criteria are met pursuant to subsection 248(b):

That the facility . . .

(1) will not unduly interfere with the orderly development of the region;
(2) meets the need for present and future demand for service which could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy-efficiency and load management measures;
(3) will not adversely affect system stability and reliability;
(4) will result in an economic benefit to the State and its residents;
(5) with respect to an in-state facility, will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and the public health and safety;
(6) is consistent with the principles for resource selection expressed in that company's approved least cost integrated plan;
(7) is in compliance with the electric energy plan approved by the Department under section 202 of this title, or that there exists good cause to permit the proposed action;
(8) does not involve a facility affecting or located on any segment of the waters of the State that has been designated as outstanding resource waters by the Secretary of Natural Resources, except that with respect to a natural gas or electric transmission facility, the facility does not have an undue adverse effect on those outstanding resource waters;
(9) meets planning requirements for with respect to a waste to energy facility;
(10) load can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers;
(11) with respect to an in-state generation facility that produces electric energy using woody biomass, meets air, performance and wood harvesting standards.

Not all of the listed provisions apply to each petition. For example, (b)(9) applies only to waste-to-energy facilities, and (b)(6) does not apply to merchant generators, who are not required to have integrated resource plans. Other state agencies and town and regional planning bodies also participate in the process to represent their respective concerns. Regional and town planning and governing entities may focus on aesthetics or orderly-development concerns related to

subsections (1) and (5). The Department of Historic Preservation would be most concerned with provisions of subsection (5) related to historic sites. The Agency of Natural Resources addresses the other provisions of the same section along with subsection (8). Coordinating with other parties, the Department of Public Service may take positions that are related to the concerns of other state agencies, towns, regional planning commissions and other intervenors, and will typically have concerns of its own as well.

Other provisions of Section 248 pertain to process, notice to other agencies, public hearings, and provisions related to the eventual decommissioning of the facilities constructed. In proceedings and forums affecting the regional grid, the DPS is directed to "advance positions that are consistent with the statutory policies and goals set forth in 10 V.S.A. §§ 578, 580, and 581 and sections 202a, 8001, 8004, and 8005 of this title. 30 V .S.A. § 2(g). The policies and goals of the statutes cited in § 2(g) apply to more than just the regional context, and are not confined to an interest in the lowest possible rates. For example, section 202a articulates "State Energy Policy" and provides that:

> It is the general policy of the state of Vermont:
>
> (1) To assure, to the greatest extent practicable, that Vermont can meet its energy service needs in a manner that is adequate, reliable, secure and sustainable; that assures affordability and encourages the state's economic vitality, the efficient use of energy resources and cost effective demand side management; and that is environmentally sound.
>
> (2) To identify and evaluate on an ongoing basis, resources that will meet Vermont's energy service needs in accordance with the principles of least cost integrated planning; including efficiency, conservation and load management alternatives, wise use of renewable resources and environmentally sound energy supply

Similarly, §§ 8001 *et seq.* speak to efficient use of resources, protecting air and water quality, reducing global climate change, and securing a diverse energy supply - as well as benefitting ratepayers. Sections 8004 and 8005 relate to the Renewable Energy Standard, which requires investments to accomplish a number of stated purposes with the explicit overall goal of securing the economic *and* environmental benefits of renewable energy generation. The cited sections of Title 10 relate to the State's goals with respect to greenhouse-gas reduction, renewable energy, and the efficiency of Vermont's housing stock.

Section 218d – Alternative Regulation

Regulation of utility rates in Vermont was historically accomplished with "traditional regulation," using long-standing procedures and statutory directives (e.g. 30 V.S.A. §§ 218, 225, 226, and 227). Under this model, utilities typically filed rate cases on their own initiative, at irregular intervals that could span a number of years.[4] These cases are "contested cases" subject

[4] The DPS has authority to seek, and the Board can open on its own, a rate review without a utility petition. This does happen but is much less common than rate cases initiated by the utilities.

to the Administrative Procedures Act. While many of these cases were litigated to a final PSB order, it was not uncommon for them to be settled, either before or after hearings.

In 2003 the General Assembly enacted what is now 30 V.S.A. § 218d, authorizing "alternative forms of regulation" provided that a number of criteria were met by a proposed plan. It is important to note that the rubric of "alternative regulation" (or "Alt Reg") is very broad and can include a wide variety of regulatory structures and procedures. One concern about the Alt Reg structure is that it is structured to be an expedient process with only the Utility and the Department participating. As passed by the Legislature, Vermont's alternative regulation process allowed for an Alt Reg plan to go for four years, with another four year renewal. Thus, it could be eight years before a traditional rate case was heard and other parties could participate meaningfully. As a matter of policy, we have changed the practice to allow Alt Reg plans only for three years, with a one year extension possible, thereby ensuring a traditional rate case at least once every four years.

It is very important to keep in mind the goals of alternative regulation, and its advantages and disadvantages compared to traditional regulation as one assesses its effectiveness. Three areas of difference between these regulatory structures are described below: revenue decoupling, power adjustment pass-through, and performance regulation.

Revenue Decoupling

Under traditional regulation, utilities earn more profit when they sell more energy, creating a strong financial incentive to increase sales.[5] This incentive is directly at odds with Vermont's long-standing policy goals of promoting energy efficiency and non-utility-owned small-scale renewable generation (such as rooftop solar systems). Both energy efficiency and customer-owned renewable generation drive down utility electric sales. Under traditional regulation, utilities have a strong financial incentive to actively work against efficiency and renewable goals. (If electric sales are increasing utilities are unlikely to file rate cases, and are allowed to keep any profits attributable to the increased sales.)

Revenue decoupling refers to removing the association between sales and profit. In Vermont, as elsewhere, revenue decoupling is effectuated through alternative regulation. The alternative regulation statute specifically references this disassociation as a goal. 30 V.S.A. § 218d(a)(4). This serves an important policy objective of reducing the need for electricity, and deriving it from small, local, renewable sources. If structured thoughtfully, decoupling can enlist the utility as an ally in efforts to move Vermont toward its efficiency and renewable-energy goals.

However, there are many ways to structure alternative regulation, and other jurisdictions have

[5] Lazar, J., Weston, F., Shirley, W., (2016), *Revenue Regulation and Decoupling: A Guide to Theory and Application (incl. Case Studies).* Montpelier, VT: The Regulatory Assistance Project. Available at: http://www.raponline.org/wp-content/uploads/2016/11/rap-revenue-regulation-decoupling-guide-second-printing-2016-november.pdf.

successfully decoupled in a variety of ways.[6] Vermont's current approach to alternative regulation, and its attendant issues, could be addressed by changing the present structure of alternative regulation rather than by dispensing with it altogether. Decoupling remains an important tool for aligning utility interests with state policy goals, which is difficult at best under traditional regulation.

Power Cost Pass-through

Another feature of alternative regulation that has significant benefit is the direct flow-through to customers of changes in energy costs. This is the Power Supply Adjuster in GMP's current plan and the Purchased Gas Adjustment in VGS's plan.[7] These features allow the utility to pass wholesale costs for electricity or gas directly through to customers on a quarterly basis without the need for a rate case. Any decrease in power costs goes back to customers through a rate decrease, as we have seen in natural gas for several years. This mechanism benefits the utility by reducing the risk of rapidly escalating wholesale power costs, over which they have little control, eating into operating revenue before they can be reflected in rates.

These features also reduce the cost of capital, which benefits ratepayers. For example, if wholesale electricity suddenly tripled in price for a sustained period because of shortages, under traditional regulation utilities would have a very difficult time maintaining financial solvency. Under a direct energy-cost pass through, utilities can collect those costs sooner, reducing financial risk. Credit rating agencies consider this risk when rating utilities. If utilities have better credit ratings, they can borrow capital at a lower interest rate, saving customers money in borrowing costs. This feature is enabled by the alternative regulations statute and is not allowed under traditional regulation.

Performance Regulation

In many jurisdictions, alternative regulation is used to tie utility profitability to performance (rather than sales). For example, a utility may earn part of its revenue for providing reliable service, reducing outages, managing peak demand to control costs, or providing excellent customer service. Previous alternative regulation plans in Vermont have not used this type of financial performance incentive, but may well include them in the future. Performance incentives provide a way for the utility to earn profit other than investing in rate base. In other words, performance incentives can potentially reduce the incentive to invest heavily in infrastructure that may not be strictly needed to deliver energy. Performance incentives are generally not permitted under traditional regulation.

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[6] Migden-Ostrander, J., Watson, B., Lamont, D., and Sedano, R. (2014), *Decoupling Case Studies: Revenue Regulation Implementation in Six States*. Montpelier, VT: The Regulatory Assistance Project. Available at: http://www.raponline.org/document/download/id/7209.

[7] Vermont Gas and the Department have recently agreed to terminate VGS's current alt-reg plan, except for the Purchased Gas Adjustment. As noted in the text, this adjustment mechanism has benefitted customers in recent years.

Conclusion: Department's Statutory Responsibilities

The legislative directions to the Department balance the pecuniary interests of ratepayers with other goals. Other statutory goals include promotion of environmental quality, efficient use of energy, reliability of energy systems, etc. Pursuit of these other goals may put upward pressure on rates in the interest of other values that are not always readily monetized.

The Department's over-arching goal can be summarized as the pursuit of *reliable, least cost* utility service. The term "least-cost" may suggest a focus on the lowest possible rates right now. The statutes provide a more comprehensive and nuanced definition that guides the Department, Board, and utilities. Electric and gas utilities are required to prepare and implement a "least cost integrated plan," defined in 30 V.S.A. § 218c as:

> (a)(l) A "least cost integrated plan" for a regulated electric or gas utility is a plan for meeting the public's need for energy services, after safety concerns are addressed, at the lowest present value life cycle cost, including environmental and economic costs, through a strategy combining investments and expenditures on energy supply, transmission, and distribution capacity, transmission and distribution efficiency, and comprehensive energy efficiency programs. Economic costs shall be assessed with due regard to:
> (A) The greenhouse gas inventory developed under the provisions of 10 V.S.A. §582;
> (B) The State's progress in meeting its greenhouse gas reduction goals;
> (C) The value of the financial risks associated with greenhouse gas emissions from various power sources; and
> (D) Consistency with section 8001 (renewable energy goals) of this title.

This statute explicitly requires the Department, as well as the Board, to consider not only monetary but also economic and environmental costs and safety, and to do so on a life-cycle basis. This will not result in the lowest rates today, a fact of which the General Assembly was undoubtedly aware. For example, energy efficiency (a/k/a demand-side management) by its nature tends to require up-front investment that may incur costs, but can lower bills both in the short term and in the longer term as transmission upgrades, new power plants, and other costs associated with growing loads are avoided. The Department of Public Service is affirmatively instructed to "supervise and direct" the execution of the statutes cited above as well as many others in Title 30.

In its other regulatory functions, the Department is guided by the policies and direction set out in Title 30 and those goals established in its plans. For example, Section 202(c) provides guidance on telecommunications policy.

Case Summaries

1. Docket No. 8400 – TDI New England High Voltage Transmission Line (merchant transmission)

This case involves a petition filed in December of 2014 by Champlain VT, LLC, d/b/a TDI New England ("TDI-NE" or "Petitioner") for a certificate of public good ("CPG") under 30 V.S.A. §

248, seeking authority to install and operate a high voltage direct current ("HVDC") underwater and underground electric transmission line with a capacity of 1,000 MW. The project also includes the construction of a converter station and other associated facilities, collectively known as the New England Clean Power Link (the "Project"). The Project is to be located within the Vermont portion of Lake Champlain and in the counties of Grand Isle, Chittenden, Addison, Rutland, and Windsor, Vermont. On January 5, 2016, the Vermont Public Service Board issued a Final Order in the proceeding in which it approved the proposed Project subject to numerous conditions negotiated by the Department and other parties as set forth in several memoranda of understanding.

Besides the Petitioner and the Vermont DPS, 18 other parties petitioned for and received intervenor status in the proceeding. These included several state agencies and regional planning commissions. Intervenors also included towns that were traversed by the project.

In addition to the technical hearings and review by the Board, the Board also held a public hearing on February 24, 2015 at Fair Haven Union High School.

Some of the listed provisions in 30 V.S.A. § 248 do not apply to this petition (e.g., subsection (b)(6), (9), (10) and (11)), either because the applicant is not a traditional regulated distribution utility, or the provisions pertain to a gas utility.

Position taken by the Department of Public Service

Need for Present and Future Demand

30 V.S.A. § 248(b)(2) relates to the question of whether the project is needed and whether that need could be met more cost effectively through other means. The DPS's testimony noted that the project is more analogous to a merchant generation facility than to a traditional transmission line, since traditional drivers of transmission like reliability are not the driver for this project. Rather the project is driven by market opportunities that are perceived by a third-party merchant developer. Traditional notions of "need" and consideration of alternatives that may obviate the need at a lower cost or through less environmental damage do not apply as they would to a traditional utility project. The Department reasoned that the need criteria may best be applied by considering the impacts on regional markets for energy, capacity, and renewables.

With respect to energy, the result is likely a reduction in state (and regional) energy prices, although, in the opinion of the DPS, the state impacts here are not of the magnitude estimated by the Petitioners. With respect to capacity, the project would likely increase the cost of capacity to the state as it would render the state an import-constrained zone for capacity. The DPS concluded that the project is consistent with 30 V.S.A. § 248(b)(2), provided that it serves to transfer renewable energy. This was a result that seemed likely but was not assured through the original petition. Additional assurances would be required. The Department also concluded that project would contribute to regional resource diversity.

Adverse System Impact

30 V.S.A. § 248(b)(3) relates to the impacts of the project on system stability and reliability.

The DPS initially indicated that it was too early to conclude that the project met the standard and followed that statement with recommendations for additional information needed to form a conclusion on this point. Additionally, the DPS recommended other conditions necessary to protect ratepayers from the additional costs of interconnecting the Project to VELCO's system. Among the recommendations were that additional determinations are needed in the technical review of the project (a System Impact Study, or SIS) to address concerns associated with system impacts, and that "the Board should include in a CPG issued for this project a condition that TDI will pay the capital and operating costs of all transmission and subtransmission upgrades identified by the SIS."

Economic Benefit

30 V.S.A. § 248(b)(4) relates to the Project's economic benefits to the state. The DPS's testimony indicated that while there are indeed economic benefits to the state, these benefits are likely a fraction of those reported by the petitioner's witness. The DPS also indicated that the project is not paid for by ratepayers and that provides a significant reason supporting an economic benefit to the state. The developer bears the cost and risk of the Project. The DPS highlighted four public benefit funds associated with the Project that contribute to its economic benefits, including:

- Vermont Electric Ratepayer Benefit
- Vermont Renewables Program
- Lake Champlain Phosphorus Cleanup
- Lake Champlain Trust Fund

These are described further below.

Consistency with Integrated Resource Plan

30 V.S.A. § 248(b)(6) asks whether the Project is consistent with a utility's approved least cost integrated plan. The DPS testimony explains that the project does not require such a determination, since there is no such planning requirement for a merchant transmission provider.

Consistency with Electric Energy Plan

30 V.S.A. § 248(b)(7) relates to compliance with the state's electric energy plan. The DPS testimony indicates that the plan does not make express provision for such merchant transmission projects. The relationship with non-transmission alternatives is obscured by the fact that this project is not intended to address a traditional reliability need, but is rather an electric transmission upgrade intended to increase market access to more energy resource options. There is no definitive framework for inclusion or consideration of potential non-transmission alternatives that could otherwise serve the need. For a variety of reasons cited in testimony, the transmission project appears to be broadly consistent with provisions of the plan, especially as it relates to increasing availability of renewable energy in Vermont and New England. The DPS agreed with significant portions of the petitioner's position with respect to the project and its consistency with the plan, although it disagreed with certain of the Petitioner's characterizations about the project's consistency with the plan.

The DPS also addressed the question of whether the project meets the less-specific "general good" requirements of Section 248(a). Here, the DPS testimony noted that this criterion would require balancing considerations that included the benefit funds listed above.

Terms of the Stipulation and Concessions Garnered or Given by the Department

As noted above, the Department's position was largely supportive of the project but also advocated for additional public benefits relative to the Project's impacts on the grid. The Department further noted that any additional costs incurred by the transmission system would need to be borne by the Petitioner to ensure that the project met requirements for impacts on reliability without economic burden to the state's ratepayers.

In the end, the Department of Public Service joined with the Agency of Natural Resources and the Division of Historic Preservation in signing a memorandum of understanding (MOU) resolving the major outstanding issues in the case that pertained to these agencies. Under the stipulation the parties did not waive their right to take positions in the "collateral" investigations examining the subsequent facilities that are deemed necessary for the ultimate success of the Project (Stipulation, Paragraph #4.c.)

The major benefit that was garnered through negotiations with the Petitioner concerned the increases in the Public Benefit Funds. The MOU reflects the following public benefit funds:

- Vermont Electric Ratepayer Benefit – Averaging $3.4 million a year for 40 years. (no change from the Petition)
- Vermont Renewable Programs (through the CEDF) – $109 million over a forty year period with payments of $5 million per year for the first 20 years (beginning with the first year of the project)
- Lake Champlain Pollution Abatement and Restoration Fund – Includes $201 million over the 40 years of the project
- Lake Champlain Enhancement and Restoration Trust Fund – Includes almost $60 million deposited in a fund over the 40 years of the project.

In addition to the above, the Project brings the economic benefits initially identified by the Petitioner. These included an estimated $301.2 million in property taxes, $328.3 million in state corporate income taxes, VTrans Lease Payments of $21.9 million, Vermont Sales Tax of $31.4 million during construction, Vermont Employment and Non-Employment Expenditures of $184 million during construction, and the roughly $310 million in spending during operations. Vermont ratepayer savings in the first 10 years are substantial, ranging from $89 million to $134 million, depending on the level of assumed hedging (between 50 and 25 percent). The Board found that other savings to Vermont ratepayers would flow from reductions in capacity costs and ancillary services. In total, the Board found that the economic benefit of the Project to Vermont would be approximately $1.935 billion.[8]

[8] Board Order, 1/5/16 at 41.

While the Vermont Electric Ratepayer Benefit remained the same in both the original Petition and the Stipulation, the other three public benefit programs reflected substantial increases over the original petition. ***The Department, acting on behalf of residential and all other ratepayers and citizens of Vermont negotiated substantial increases in public benefits. The monies flowing to the Vermont Renewable Program reflected an increase of $69 million over the course of the project. The Lake Champlain Phosphorous Cleanup reflected an increase of $119 million over the course of the project. The Lake Champlain Trust Fund reflected an increase of $20 million over the course of the project. These add to a total of $208 million in achieved benefits for Vermonters.***

The Stipulation also includes a long list of requirements that are imposed upon the Petitioner in later stages of the review and ultimate construction of the project. These include (i) the submission of final plans for review, (ii) compliance with representations, (iii) provision for Board review and opportunity for comment of substantive changes pursuant to permitting, (iv) Board review of the system impact statement, (v) permissible timeframes for construction, (vi) noise limits on the converter, (vii) Board review of the blasting plan, (viii) a decommissioning plan and cost estimates, (ix) that all host town agreements shall be enforceable under the CPG, (x) compliance and membership of the Petitioner in dig safe, (xi) submission of a underground damage prevention plan, (xii) provisions related to the environment and historic preservation, (xiii) good faith negotiations with Vermont distribution utilities for up to 200 MW of transmission service for 20 years, (xiv) contracts and verifications of the renewable character of the energy supplied over the lines consistent with representations of the Petitioner, (xv) aesthetic conditions, and (xvi) a commitment to renegotiate in good faith the public benefit provisions of the project by its owners, in the event that the project's life exceeds expectations.

As a concession to the Petitioner, the Department agreed that from its perspective and subject to the conditions of the MOU, the Project and the Petitioner have satisfied the requirements of Section 248, including the requirement of Section 248(a) regarding promoting the general good of the state (Stipulation, Paragraph # 1, and Subparagraph #3.b.) This concession provided for the timely review and project approval, which was important to the project developers. The Department and other parties to the stipulation also allowed that the Petitioner <u>may</u> operate beyond the 40 year period that is covered by the manufacturer's warranty, understanding that the Certificate of Public Good does not have an expiration date. Another concession related to the need for a decommissioning fund. Current practice before the Board would require the establishment of a project decommissioning fund. However, the nature of the project was such that it made little sense to do more than leave the line in the ground at the end of the Project's life. Even while the decommissioning fund issue was an important concession, it was one that could be offered without regret.

The Agency of Natural Resources conceded that the agreement allows use of the Korean Veterans Access Area in Alburgh to construct a portion of the project. In exchange, the Petitioner will provide $350,000 for a new boat ramp in the area.

2. Docket No. 8188 – Cold River Project – 2.3MW Solar Installation

This case involves a petition from Rutland Renewable Energy, LLC for a certificate of public good, pursuant to 30 V.S.A. § 248, authorizing the construction of the "Cold River Project" consisting of a photovoltaic electric generating facility of up to 2.3 MW located at the intersection of Cold River Road and Stratton Road in Rutland, Vermont. The Petition was filed in December of 2013. The Board issued a CPG on March 11, 2015. The decision was appealed to the Vermont Supreme Court and a decision affirming the original Board decision was issued on April 29, 2016.

There were five parties to the case, including the Department and the Agency of Natural Resources. In addition, the town of Rutland as well as a group of nearby landowners (the Neighbors), and Green Mountain Power were also granted party status. 21 individuals also participated in a public hearing held on March 26, 2014.

A site visit by the Board was held on April 18, 2014 and a second site visit was held on August 18, 2014. Technical hearings were held on the project over three days in August of 2014.

Position taken by the Department of Public Service

The position taken by the Department of Public Service were presented through testimony of one expert witness, and in post-hearing briefing. The Department's expert focused on the aesthetic impact of the proposed project on the surrounding area. Department counsel also successfully argued in briefs for permit conditions that helped to protect public health and safety and increase the project's decommissioning fund to an appropriate level.

The Department's expert concluded that the project would have an adverse aesthetic impact on the surrounding area, but that the impact would not be undue. The Department then briefed this issue consistent with the expert's conclusions. The Department also briefed a public health and safety issue related to the specifications for the proposed perimeter fence surrounding the project. The Department recommended that the Public Service Board require the project developer to submit an affidavit from a Vermont-licensed master electrician or electrical engineer prior to project operation, certifying that the fence satisfied all applicable electrical safety codes aimed at discouraging unauthorized entry into the project site. Finally, the Department recommended in briefing that the Board require the project developer to revise its decommissioning cost estimate upward, to include costs not included in the initial cost estimate submitted with the project petition.

Once the Department was able to conclude that the project would not have an undue adverse impact on the aesthetic resources of the area or on public health and safety, and an appropriate project decommissioning fund was in place, it was able to support the project. This support for a renewable energy project is consistent with the Department's responsibilities under Title 30 "to assure, to the greatest extent practicable, that Vermont can meet its energy service needs in a manner that is adequate, reliable, secure and sustainable; that assures affordability and encourages the state's economic vitality, the efficient use of energy resources and cost effective

demand side management; and that is environmentally sound.[9]" Further, support of this project also furthers the renewable energy goals of the state as expressed in 30 V.S.A. § 8001.

Aesthetics, Historic Sites, and Rare and Irreplaceable Natural Areas

With respect to the criteria of 30 V.S.A. § 248(b)(5) (incorporating 10 V.S.A. § 6086 (a)(8)), related to the question of whether the project creates an undue aesthetic impact, the Department's witness used the Quechee test to evaluate the aesthetic impact of the proposal. There are three critical questions to be answered under the Quechee test. The first prong of the test is: Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area? The witness determined that there was no such standard that applied to the project. The second prong of the test is: Does the project offend the sensibilities of the average person? The witness position was that while the project would have an impact on the aesthetics of the area, that impact would not be undue. The third part of the test is: Has the Applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the proposed project with its surroundings? The Department concluded that the applicant had, in fact, taken reasonable measures to mitigate the impact. The Board agreed with the Department's position. The town disagreed and appealed, stating that the Board (and by inference, the Department) had not given sufficient weight to the Town's position that the aesthetic impact will, in fact, be undue. Additionally, the town contended that the project will interfere with the orderly development of the region.

The town and the adjoining landowners appeal relied, in part, on a document entitled Town of Rutland Solar Facility Siting Standards, adopted by the select board on October 23, 2013. The document was drafted as an amendment to the town plan, but never formally adopted into that plan. It contained numerous setback requirements for solar projects, as well as a prohibition against locating solar projects on prime agricultural soils and a prohibition against siting within 500 feet of a historic building.

Regarding the impact on development of the region, the Supreme Court found that nearly all of the evidence submitted in the case was related to impact on the town, rather than the region. As a result, there was no basis in the record for a finding regional impact, and denied the town on that point. Because of that, it was not necessary to examine whether "due consideration" was given to the town's position on that point.

Regarding the notion that the aesthetic impact was undue, the Court found that the project met the three tests of the Quechee test as described by the Department witness. Regarding the first prong of the test, the Board found that the various setback and other requirements pertaining to a solar development were de facto zoning requirements and they were precluded, since 24 V.S.A. § 4413 (b) provides that zoning bylaws "shall not regulate public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248."

[9] 30 V.S.A. § 202(a)(1)

The court also agreed with the Board's holding that the town had not designated a specific area for aesthetic protection, and therefore their objection did not rest on a community standard.

The Court upheld the Board's decision on the second element of the Quechee test as well; the project does not offend the sensibilities of the average person. The town and the neighbors considered the impact from their point of view, rather than from the viewpoint of the average person as the Board is required to do. The Court found that while the Board is not required to consider the vantage points of individual landowners, it did so when recommending additional and improved visual mitigation measures, as recommended by the Department in the testimony of its expert witness.

The court also found that the applicant met the third prong of the Quechee test in that the developer had taken generally available mitigation steps to minimize the aesthetic impact. The court went on to discuss the neighbor's contention that the project should have been relocated to a more appropriate site.

In this case, the position of the Department was adopted by both the Board and the Supreme Court. The Department had to walk a delicate line of promoting the renewable objectives contained in statutes while balancing this with the rights of both the project developer as well as the towns and adjoining property owners. In this case, the Department's position was affirmed as consistent with the applicable statutes and precedent.

Public Health and Safety

The Board is also required to find that a proposed project will not have an undue adverse impact on the public health and safety under the 30 V.S.A. §248(b)(5) criteria. The developer of the proposed project had represented in its petition that the perimeter fence surrounding the project would meet all applicable electrical safety codes specifically aimed at limiting unauthorized access to potentially dangerous components of the facility. The required specifications of a perimeter fence are generally outlined in the relevant electric safety codes, but specific code requirements are open to interpretation in some areas.

In this case, the Department recommended a new approach to evaluating the veracity of the developer's claims regarding the effectiveness of the proposed perimeter fence. Rather than attempt to evaluate the site-specific fencing proposed for the project against the applicable safety codes as it had done in past cases, the Department established through cross examination at hearing that the proposed fence met all applicable safety codes. The Department then recommended in briefing that prior to project construction, the Board require the developer obtain certification from a Vermont-certified master electrician or electrical engineer that the proposed fence did, in fact, meet the applicable safety codes.

The Department's recommendation was adopted by the Board in its final order, and the condition was not challenged by the developer on appeal. This new approach appropriately placed the burden on the developer to show beyond mere representation that the proposed fence would be effective at limiting unauthorized site access, as opposed to forcing the Department to evaluate

and potentially challenge the fence safety claims on a case-by-case basis. This new condition language has been adopted by the Board in cases since this one.

Project Decommissioning Fund

Under Board Rule 5.402(c)(2) a petition for the construction of a non-utility generation facility with a capacity of more than one megawatt must include a decommissioning plan for the project at the end of its useful life. The Cold River Solar project is subject to this requirement. The project petition proposed to establish a fund of approximately $72,000 to cover the projected costs of decommissioning the project. The Department established through discovery and cross examination at hearing that the developer had reduced the decommissioning cost estimate by approximately $96,000 by subtracting out anticipated salvage value for certain project components, contrary to Board precedent. The Department argued in briefing that petitioners are required to account for any and all decommissioning related costs regardless of any anticipated salvage value for project components, and recommended that the project decommissioning fund be initially established at $170,000. The Board adopted the Department's recommendation and required that the developer more than double the proposed funding amount, and set the fund consistent with the Department's recommendation. The developer did not contest this condition on appeal.

3. Docket No. 8684 – Establishing Rate Schedules for Power Sold to the Purchasing Agent

This case involves a petition from the Department of Public Service to open an Investigation into Establishing Rate Schedules for power sold to the Purchasing Agent pursuant to Public Service Board Rule 4.100, l6 U.S.C. § 824a-3 and 30 V.S.A. § 209(a)(8). The Petition was filed in October 30, 2015.

History and Background

In Vermont, the Public Service Board (Board) is the state regulatory authority that has the responsibility for implementing the Public Utilities Regulatory Policy Act ("PURPA"). 30 V.S.A. § 209(a)(8). This Act requires that electric utilities offer to purchase electric energy and capacity from "Qualifying Facilities" at rates that are just and reasonable, non-discriminatory, and which do not exceed "the incremental cost to the electric utility of alternative electric energy", or "avoided costs".

The Board issued Rule 4.100 to provide guidance and structure for meeting Vermont's responsibilities under PURPA and FERC regulations. Rule 4.104(E) sets forth the process for establishing the avoided cost rates to which QFs may become entitled, provided other provisions of the rule are met. That section provides that the Department should annually determine the avoided capacity and energy costs of the Vermont composite electric utility system and file proposed rate schedules with the Board. After hearing, the Board shall approve or modify those rate schedules.

After a long hiatus, this process again took place over the course of 2014. The Department proposed generic avoided cost rate schedules in August 2014, and the Board adopted them, with minor adjustments, on February 9, 2015.

However, in the time between when those rates that were developed, market conditions had changed significantly, making the rates developed in 2014 and adopted in 2015 significantly higher than more current projections. This change in market conditions necessitated the petition from the Department.

Position taken by the Department of Public Service

The Department realized that expectations of market prices had declined and took action to file a petition with the Board to adjust the rates. This was significant because current projects in the queue were eligible for the higher rates. The Department's action stood to benefit both consumers and power producers. Consumers benefit from the lower costs for power; while producers benefit because they might otherwise run the risk of a challenge to their proposal by selling power under outdated rates. *See, e.g.*, *East Georgia Cogeneration LP*, 158 Vt. 525 (1992). In fact, such challenges did materialize during the pendency of this case.

In taking this action, the Department also sought to have the new rates adopted on an interim basis, subject to a final determination from the Board regarding their adequacy. For the reasons stated above, this also protected consumers and benefitted producers. To expedite the proceedings and provide transparency, the Department filed complete work papers and testimony describing the rates along with the petition to the Board.

Current Status of the Case

This matter was heard and briefed during the summer of 2016; the Board has not yet issued an order. However, shortly after the hearing in this case, a revised Rule 4.100 went into effect. The revised rule no longer requires annual rate-setting proceedings

4. Docket No. 8390 – FairPoint Communications, Provision of Service Quality

This case involves an investigation into the quality of service provided by the Telephone Operating Company of Vermont LLC. The Telephone Operating Company of Vermont is doing business as FairPoint Communications ("FairPoint").

The investigation was opened following a petition filed by the Department on December 1 of 2014. The Department's petition was triggered by an event in late November of 2014 that presented an immediate concern for public health and safety. FairPoint experienced a network outage after weather conditions contributed to two fiber cuts on its network. This event resulted in all customers unable to reach emergency services and 911 for a period of some number of hours. This event was coupled with and reflected overall poor service quality and performance by FairPoint. Between September 4, 2014 and November 30, 2014, the Department received 388 complaints regarding the quality of service provided by FairPoint, at least 3 times the normal

levels. In addition, FairPoint had failed to meet the baseline service quality standards for Residential Troubles Cleared within 24 hours for straight 5 quarters.

The Department's petition noted that FairPoint was failing to meet service quality standards established in Docket 5903 and that the Department was receiving a high number of customer complaints concerning service interruptions and delays in the repair of service. (In 1999, Docket 5903 established eleven performance metrics for Vermont telecommunications providers.[10] FairPoint began reporting results from the Docket 5903 Metrics on April 1, 2013. Prior to then, FairPoint successfully adhered to standards from its Docket 7724 Retail Service Quality Plan.) Concern was expressed that other related factors were likely to further contribute to the poor performance of the company and its ability to deliver promised levels of service. This included the labor strike called by FairPoint's union workers in mid-October of 2014.

Shortly following the petition, the Board opened an investigation and asked that the parties address common concerns associated with FairPoint, including, billing practices, failure to show up for scheduled appointments, untimely provision of new service, failure to fix outages or address poor service issues quickly, and unauthorized disconnection of service. Complaints from customers had been high and increased during the labor strike that occurred from October 2014 to late February 2015.[11]

The authority to investigate and pursue this investigation into the service quality and reliability performance of FairPoint by the Board and Department rests with their broad authority under 30 VSA Section 203 and Section 209(a)-(c), which extends authority to address service quality and to protect the health and safety of utility customers. Section 209(b) provides authority to create rules that are relevant to the oversight of telecommunications (and other) utilities.

Terms of the Stipulation and Concessions Garnered or Given by the Department

The Department and FairPoint agreed on a settlement that was memorialized in the MOU entered on August 10, 2016. The MOU addresses four main issue areas: (1) service quality, (2) the SS7 network, (3) Board Rule7.609(C), and (4) the Connect America Fund II with accompanying commitments to broadband delivery.

Service Quality

FairPoint suffered very poor service quality performance prior to the investigation. Service levels were as poor as they had ever been. By the time that the Department reached a settlement with FairPoint, remediation steps had resulted in the Company once again achieving the performance targets under the metrics, save the one metric related to Troubled Cleared within 24 hours.

[10] http://publicservice.vermont.gov/sites/dps/files/documents/Info_Utilities/RETAIL_SERVICE_QUALITY_REPORTING_INSTRUCTIONS.doc

[11] Final Order Docket 5390, 12/18/15.

Under the MOU, FairPoint will continue to report its performance under the Docket 5903 metrics on a quarterly basis, except for the "Troubles Cleared" metric. The "Troubled Cleared" metric was to be reported on an annual basis.

The MOU changes the way that FairPoint's performance will be regulated under the Docket 5903 metrics. It requires FairPoint to file only one Action Plan annually for the Troubles Cleared metric. The Department conceded that multiple Action Plans are not needed as this metric represented a special category with vulnerability to even some common weather events like a heavy rain.

The Department and FairPoint agreed to defer certain issues in the proceeding to allow for timely treatment of the CAF II issue. As such, the Department also agreed to support FairPoint's request for a separate proceeding that considers alternatives to the current performance standards, as well as continued service quality reporting requirements concerning FairPoint customers who do not have access to an alternative telecommunications provider.

The SS7 Network

Under the MOU, the Department and FairPoint agreed to requirements to ensure the reliability of the SS7 network. FairPoint had agreed to implement all changes and protocols recommended by the Department's experts, and instituted several SS7 network upgrades to improve the network and operational changes to improve its ability to prevent and respond to SS7 outages going forward. Within three months of the issuance of the final Order, FairPoint committed to completing the needed upgrades and improvements to its SS7 network and procedures regarding its SS7 network.

The Department agreed, and so did the Board, that these measures would address issues related to the SS7 system.[12]

(Alternative landline services are available in the majority of the state.) In exchange for the Department's agreement on the above issues, FairPoint committed to accepting CAF II funding that is needed to build out its broadband services to underserved areas within its service territory. The CAF II commitment is a multi-year commitment to upgrade the broadband capabilities of the network for the affected population.

Bill Credits

FairPoint agreed to provide retroactive bill credits calculated under Board Rule 7.609(C) to existing customers who were out of service for more than 24 hours at any time between April 1, 2013, and February 28, 2015. Further, FairPoint agreed to train and require center representatives to inform any customer calling to report a service interruption or outage that a bill credit will be available if the repair is not completed in 24 hours and the customer calls back to request the credit. Not all issues related to the issue of bill credits were resolved in this proceeded and were left to be addressed in the subsequent service quality investigation.

[12] PSB Order 8390 at 16.

Connect America Fund (CAF II)

FairPoint agreed to accept CAF II program funding for Vermont. Under the CAF II fund, FairPoint is eligible for approximately $52.7 million in federal funding to Vermont over six years to be used toward increasing broadband. Federal funds require a commitment of considerable additional funds from FairPoint that will be necessary to provide the upgrades. The commitment will require significant broadband buildout to underserved areas as identified and required by the FCC, at significant additional FairPoint capital investment. This investment will result in additional fiber facilities that will likely provide improved system reliability and capability for the for FairPoint's system.

The FCC funds and capital commitments of FairPoint will be used to increase speeds for approximately 28,400 customers within the state. The commitment has a clear value to the 28,400 customers, but also to other customers that will realize additional improvements to service capabilities and speed. It is acknowledged that the broadband capabilities are not considered "cutting edge" but represent a material step forward in service delivery for the customers affected. But without the commitment to CAF II, there is no assurance that these needs will be substantially improved in the near future.

This commitment is regarded by the Department as an important achievement in agreeing to the terms of the MOU.

The Department and FairPoint segmented portions of this dispute for review under a separate service quality proceeding. The MOU, however, addressed the immediate shortcomings of the company, established forward-looking remedies, and extracted an important commitment to broadband service capabilities for rural segments of the customer base looking forward into the more distant future. The investigation was launched by the Department of Public Service. All issues were either substantially remedied going forward or were deferred for separate investigation. All recommendations related to the SS7 network were agreed to by the Company. No material concessions were made to the company over the course of negotiations beyond deferring a subset of issues for a later investigation that was necessary to secure the commitment to the CAF II fund.[13] Time was of the essence for the Department and FairPoint, as the CAF II fund offer was time limited. The Department managed to achieve the commitment.

5. Docket No. 7970 – Vermont Gas Systems Addison Natural Gas Project

In 2012, Vermont Gas applied under § 248 for an expansion of its system, proposing a transmission system from Chittenden and Franklin Counties down through Addison County to Middlebury. Originally proposed at $86 million, our analysis yielded approximately $180

[13] Interim concessions included in the MOU included that the "% Troubles Cleared Within 24 Hours" metric will be measured on a calendar year basis, that FairPoint will not be required to prepare more than one Action Plan during any calendar year, and that the Department will not seek any remedial measures relating to FairPoint's results under the Docket 5903 metrics.

million in benefits from this project, and thus, we supported it. After the issuance of a CPG in December of 2013, Vermont Gas noted project estimate changes that meant the project would cost $121 million. We reviewed that, and still found the benefits to outweigh the costs. Subsequently, the costs were re-estimated again at $154 million. Again, benefits still outweighed costs, but obviously ratepayer and Vermont public benefits compared to costs were becoming reduced. It is during this time we negotiated a cost cap of $134 million for the Addison project, recognizing our concern about ultimate potential costs to ratepayers that would be properly decided in a rate case, and that there were, in our opinion, mis-steps in the initial execution of this project. The CPG remained intact, but we acknowledged and represented we would perform an evaluation during the now-pending rate case to determine how much of this project should be passed through to ratepayers. As of this writing, we are recommending that only $112 million be allowed in rates, and that the company should absorb the difference between these costs and the current cost estimate of $165 million to complete the project. This issue is presently being litigated before the Public Service Board in Docket No. 8710.

The 2015 Memorandum of Understanding

As discussed above, we entered into a Memorandum of Understanding with the company to cap potential recovery for the Addison project at $134 million. This MOU was subsequently accepted by the Board. At the time, this meant a potential $20 million benefit for ratepayers, and now after rate-case review it may be closer to $31 million. We reserved all our rights to review the prudency of costs incurred as well as to challenge when any costs incurred should be allowed to be put into rates. Said another way, we reserved all our rights to challenge costs and to recommend disallowances. What we conceded in this negotiation was the conclusion that IF the project was completed as designed and approved by the Board, we would not challenge a conclusion that the project would be "used and useful" at the time it goes into service. We also acknowledged that there may be certain costs incurred that are beyond the company's control that should be accommodated above the cap – notably costs incurred due to excessive rights of way processes or due to protests. In the current rate case, the company has asked for $250,000 be allowed for these expenses. We have not evaluated the merits of the claims, but regardless said this addition should not be allowed in this rate year.

While protecting ratepayers with the cap, we still believe the project is worthwhile and gives Vermonters in the project footprint a choice to switch to a cleaner, cheaper and more stably-priced fuel, and one that is more environmentally sound than the oil or propane alternatives they have been used to.

As we proceed though the rate case, we will ensure that consumers are protected from both imprudent expenses and expenses not yet sufficiently documented. We will also work to ensure the rate impact of this project is modest in each year it is put into rates, and that it is stabilized by an appropriate use of the System Expansion and Reliability Fund (SERF) over the next several years.

From our review, although the case is still pending, we are proposing to the Board a rate reduction and we see no reason that the rates should not be flat or not increase at above the rate

of inflation over the next several years if the SERF is properly used. We also believe that within 3-5 years, the SERF will be collecting as much as is being returned to ratepayers, and therefore should be suspended or eliminated.

6. Docket No. 8525 – GMP Rate Design – Proposed rate design reflecting the integration of legacy-GMP and legacy-Central Vermont Public Service Corporation rates

This case involves a petition from the Green Mountain Power Corporation to integrate its legacy tariffs from both GMP and CVPS for the commercial and industrial classes of customers. The Petition was filed in May 4, 2015.

History and Background

On June 15, 2012, the Board issued a Final Order in Docket 7770 approving, subject to conditions, the proposed acquisition of Central Vermont Public Service Corporation by a subsidiary of Gaz Métro Limited Partnership, the subsequent merger of Central Vermont Public Service Corporation and Green Mountain Power Corporation, and certain related transactions and proposals. One of the conditions included in that approval required GMP to file a proposed rate design and plan for integration of legacy-GMP and legacy-CVPS rates by May 4, 2015. This docket dealt with that filing and the method and timing for integrating the legacy rates.

For a regulated utility, rates for each customer class are supposed to reflect the costs that particular customer segment places on the utility. The rates are designed to collect those costs from that customer segment with rates for various services placed at a level to do so. While in theory, this is the appropriate thing to do, in practice it is difficult because many of the cost items are shared by the different classes. Allocation of those cost burdens can be difficult. Rate design is part art and part science.[14]

Prior to this proceeding, GMP had already integrated the general residential rates for the legacy companies into a combined Rate 1.

This case addressed the remaining legacy rates for GMP and CVPS. Rates covered include residential time-of-use (TOU) rate classes and other, non-residential rate classes. Since customers make purchasing and operating decisions based in part on power costs, any unanticipated changes can affect the viability of those decisions. Therefore, it is often necessary to phase in any such changes to mitigate the impacts of sudden change.

Two large customers intervened in this case: OMYA Inc. and GlobalFoundries.

[14] Rate design is distinct from a rate case where all costs in each tariff are changed (usually increased) by the same percentage. In a rate design case, the costs in each tariff are adjusted individually (up or down) and by differing amounts to reflect changes in the allocation of company-wide costs. In simple terms, a rate case determines the size of the pie, and a rate design case determines how much of the pie is served to each customer class.

Position taken by the Department of Public Service

In this case, there were two rate design objectives to be addressed and recognized by the Department. The first was to ensure that changes to customer's rates, where justified, are made over a sufficient time period so as not to unfairly burden any customer segment with rapid changes in their costs for electric service. The second was to ensure that each customer class is charged the appropriate amount for the services that it requires. The cost that each customer class pays for utility service is intended to recover an appropriate portion of the total costs incurred by the utility to provide the service. Rates should cover incremental costs that can be directly assigned to the class and a fair allocation of joint and common costs. If one class is paying too little, another class is presumably paying too much. Such rates would potentially be unfair and could result in cross-subsidies. The objective here is to improve the fair allocation and assignment of costs for ratemaking purposes, the fundamental principle being "cost causer pays."

In its initial petition, GMP recognized both issues. Under GMP's proposal, adverse bill impacts would be managed by phasing in the rate changes over a period of one to five years (for different rate classes), generally limiting bill impacts to 2% annually, and by creating a new optional rate for one subgroup of customers that would experience more significant rate impacts as a result of the rate integration.

It is important to recognize that GMP's initial proposal in this case was both methodologically sound and customer-friendly. GMP also did significant outreach in advance of the filing to alert customers to the proposed changes. For these reasons, the Department generally agreed with GMP's approach, but sought further changes. The Department sought to lay the ground work for further improvement to GMP's rate structure in the near future, and to expand the effort to include recruitment and retention of manufacturers to the state in accordance with 30 V.S.A. § 218e. (§ 218e requires consideration of the effect of energy policy on businesses and manufacturers in the State.)

An MOU was agreed to by GMP, the Department, GlobalFoundries and OMYA (i.e. all parties to the case). Terms of the MOU covered the following:

(1) it prescribes the timing and certain requirements for GMP's next rate design;
(2) it required certain changes to the residential TOU rate classes, with an interim step aimed at integrating some of those rate classes;
(3) it makes certain changes to GMP's proposed Rate 14 and requires a marketing and evaluation plan; and
(4) it confirms the availability of GMP's Curtailable Load and Critical Peak riders to a broader range of customers.

The interests of residential ratepayers were not at issue in this proceeding. Since rate design is revenue-neutral to the utility, the MOU did not confer any particular benefit to GMP, apart from regulatory guidance for future rate designs.

Regarding timely improvements to GMP's rate structure, the MOU developed by the parties moved up the timeline for GMP's next rate design effort, and included some basic principles to

guide the future effort. One focus envisioned for the next rate design is better incorporation of the features of smart meter technology to enable customers to receive and respond to price signals to manage their load and lower their bills. This goal is consistent with the concurrent draft of the Comprehensive Energy Plan which has certain goals pertaining to "smart rates" and targets 2018 for their deployment.

The MOU also included some changes related to residential TOU rates. These changes further the Department's goal of integrating the legacy company rates through the elimination of idiosyncratic and/or grandfathered residential TOU rate schedules, thereby simplifying the rate structure.

Regarding the Department's responsibilities under 30 V.S.A. § 218e, it is anticipated that some economic efficiency will be gained through the proposed rate design as it is expected to be in closer alignment to the rate class cost of service. The Department sought to empower customers to lower their electric bills by changing their load shapes in ways that benefit the operation of the grid and lower costs for all. The MOU confirms the expanded availability of GMP's Curtailable Load and Critical Peak riders to a wider range of participants, which could result in both improved grid operation (at lower cost) and savings to participating customers. The MOU also commits GMP and the Department to establish a new pilot program for schools to assist them in evaluating participation in these programs.

Additionally, the MOU requires certain changes to the residential Time of Use ("TOU") rate classes, with an interim step aimed at integrating some of those rate classes. It also makes certain changes to GMP's proposed Rate 14 and requires a marketing and evaluation plan to measure the success of the new rate offerings. These evaluations will help inform future rate design reforms planned for in the future.

Current Status of Case

The parties to the case, including Global Foundries and Omya Corporation, filed a MOU containing the agreements discussed above on November 5, 2015. On March 24, 2016, the Board approved the conditions in the MOU and issued an order approving the proposed revised tariffs, reflecting the integration of legacy-GMP and legacy-Central Vermont Public Service Corporation rates as well as a revised rate design. The Board also approved the Memorandum of Understanding dated November 5, 2015, among GMP, the Vermont Department of Public Service, GlobalFoundries, and Omya, Inc. supporting the proposed tariffs.

7. Tariff Filing No. 8618 – Green Mountain Power Base Rate Filing

On August 1, 2016, Green Mountain Power Corporation (GMP) made a filing (Tariff Filing #8618) pursuant to its Alternative Regulation Plan (Plan) to increase the rates it charges customers 0.93 percent. The proposed increase was made up of two primary components: (1) a 0.03 percent (approx. $142,000) decrease in GMP's base rates; and (2) a 0.96 percent (approx. $5.342 million) increase in its power costs. The Department supported the August 1 filing, as it reflected a negotiated resolution to all issues in the case, and resulted in rates that both the

Department, and its longtime rate consultant, Larkin and Associates, PLLC (Larkin) found to be just and reasonable. The Board accepted the Department's recommendation and allowed the proposed rates to go into effect on October 1, 2016.

The August 1 filing reflected a rate adjustment that was much less than the proposed 3.53 percent increase proposed in GMP's initial filing, which GMP filed on June 1. The June 1 filing sought the same 0.96 percent (approx. $5.342 million) increase in its power costs. However, in contrast to the August 1 filing, the June 1 filing sought a base rate increase of 2.57 percent (approx. $14.217).

Positions taken by the Department of Public Service

The $14.3 million difference between the initial June 1 filing and the final August 1 filing was primarily the product of two things: (1) GMP's Plan, and (2) the months of work by Department staff, in close coordination with Larkin.

First, GMP's Plan includes certain features meant to streamline aspects of the rate review. The most important feature in this case is the formula that established GMP's return on equity (ROE) for the year. That formula, which basically requires GMP's ROE to change at half the year over year change in 10-year Treasuries, resulted in a 42 basis point reduction in GMP's ROE. Whereas GMP's 2016 ROE was 9.44 percent, the formula resulted in a 2017 ROE of 9.02 percent. The impact on rates is significant. About a third of the $14.3 million reduction can be attributed to this change in ROE. Importantly, because of the clarity of the Plan on this point, this was achieved without the expensive and time-consuming financial analyses that are required to litigate a utility's ROE, allowing the Department to focus its attention on other aspects of the filing.[15]

Second, the remaining two thirds of the reduction from the June 1 to August 1 filing can be attributed to the review conducted by the Department and Larkin. This work included a review of GMP's actual FY 2015 earnings, its actual power costs for the year ending March 2016, and its proposed base rates for FY 2017. In order to complete the review, the Department conducted multiple rounds of discovery on GMP, performed site visits in conjunction with Larkin staff, and held numerous meetings and calls with relevant GMP staff to work through issues. The work culminated in the final weeks of July with negotiations between the Department and GMP.

The work began in November 2015, with GMP's ESAM filing for FY 2015 costs. The ESAM, or Earnings Sharing Adjustment Mechanism, is a feature of GMP's Plan that requires a "look back" at a previously completed rate year to compare GMP's actual earnings with the authorized

[15] In the currently-pending Vermont Gas Systems rate case the Department and VGS each hired experts to calculate an appropriate return on equity. The Department's expert conducted several standard analyses and ultimately testified to an ROE of 9%, i.e. within a rounding error of the result under GMP's Plan. The return allowed to GMP is on the low end of allowed ROEs across the nation. In Q2 of 2016 the average allowed ROE nationally was 9.57%.

earnings previously set for that year. The actual under- or over-earnings are then shared between ratepayers and shareholders pursuant to formulas based on certain deadbands.[16]

This year's ESAM was novel in two key ways. First, it was the first ESAM under the most recent version of GMP's Plan (approved in Docket No. 8191). This is important because under the new Plan GMP files the ESAM in November, but it does not take effect until October of the following year (rather than in January of that year as had previously been the case). This gave the Department additional time to review the filing. Second, it was the first time that GMP sought to collect alleged under-earnings from ratepayers. GMP claimed under-earnings of $1.524 million, and pursuant to the Plan sought to recover 50% of those under-earnings (or $762,000) from ratepayers.

With the assistance of Larkin, the Department conducted multiple rounds of discovery on the ESAM and developed and performed a comparison of projected to actual plant additions for FY 2015. This data-intensive analysis enabled the Department to forcefully argue against GMP's request to collect $762,000 from ratepayers pursuant to the ESAM by demonstrating that GMP's "under-earnings" were largely attributed to spending decisions made by GMP that were untethered to the basis upon which its rates were initially set.

Also, during the winter and spring, Department staff performed a review of GMP's vegetation management practices. The issue came up in the prior year's base rates proceeding in which GMP sought cost recovery for the millions of dollars of damage caused by the historic December 2014 storm. Larkin had raised concerns at that time as to whether GMP was performing adequate vegetation management and it was agreed that the Department and GMP would continue to address the issue during the "off-season." These discussions, including additional discovery and a site visit to visually assess GMP rights of way at various stages of the vegetation management cycle, did in fact take place. The result of the Department's analysis on this point was to require GMP to devote additional resources to vegetation management pursuant to an agreed-upon framework for cost allocation.

As June 1 approached, the work pertaining to the base rate filing began to pick up. In May of this year, GMP provided the Department and Larkin with their list of proposed capital additions and Larkin performed its annual site visit to review and assess the cost support GMP had for its proposals. During that time, the Company and the Department (with Larkin) engaged in initial discussions regarding the proposed capital additions as well as other issues anticipated to arise over the course of the two month review period.

On June 1, GMP filed its proposed base rates adjustment. Throughout the next month and a half, the Department conducted five rounds of discovery. While Larkin focused on capital additions and other non-power costs, internal Department staff focused on power supply issues. The

[16] The ESAM mechanism provides GMP with greater assurance that its actual earnings will come close to its allowed return, effectively "decoupling" earnings from sales. This is valuable to the Company, and also to the public. Absent decoupling a utility has a strong incentive to increase its sales of electricity, and consequently to resist energy efficiency programs even if they are highly cost-effective for ratepayers. This "through-put incentive" is one of the weaknesses of traditional regulation, which rewards increased consumption of electricity.

review revealed a number of concerns, which the Department articulated to the Company in a July document setting forth an Issues List. This document served as the basis for subsequent negotiations and was later supplemented to describe the outcome of each issue and was filed by GMP with its August 1 filing. This was a new practice put in place to allow stakeholders and the public to have greater insight into an admittedly opaque process.

Importantly, as the *DPS Recommendations and Associated Outcomes* sheet and associated documents demonstrate, the Department achieved a significant beneficial outcome for ratepayers. The Department successfully excluded more than $37 million of proposed rate base additions from the base rates filing. The Department achieved a first-of-its-kind $300,000 "slippage" adjustment to account for a history of overly optimistic projected in-service dates – an adjustment only achievable by virtue of the data-heavy ESAM analysis demonstrating the historical slip in in-service dates. The Department achieved numerous additional adjustments that are small by themselves, but significant in the aggregate.

The end result is a rate adjustment for GMP customers of below 1 percent, keeping GMP rates more or less on par, if not slightly below, the rate of inflation. This is an important outcome. Perhaps even more importantly, the Department achieved nearly all, if not all, of the objectives it sought to achieve, including the recommendations of Larkin. This is significant given that the result was a negotiated one, in which the Department must credibly advance and articulate its position to GMP and rebut arguments advanced by GMP.

Perhaps more important, the achievement was made in the context of GMP's Plan. An evaluation of GMP's alternative regulation plan, its benefits and its challenges, is well beyond the scope of this report and of Act 130. At the end of the day, alternative regulation, much like traditional regulation, is a tool that is capable of being used to strong effect. However, they are different tools and must therefore be used in different ways in order to achieve a successful outcome. Two observations are relevant to this year's base rates proceeding on this point. First, the timeline for review of the base rates filing is very challenging, even where most of GMP's O&M costs are effectively unreviewed due to the 10-year Shared Savings Plan approved in the Merger Order in Docket 7770. The outcomes described above were achieved without the benefit of the more lengthy timeframe afforded by a traditional case.

Second, while this base rates review is shortened in comparison to a traditional case, the overall structure of GMP's Plan affords the Department a degree of access and visibility into GMP's finances and operations that is much greater than it would be in traditional regulation. The multiple reviews of capital additions before and after they are made are a far cry from the ad hoc and limited reviews that take place under traditional regulation. In light of the heightened visibility afforded by alternative regulation, the Department need not resort to "winner take all" litigation on every issue, but can instead advance certain issues incrementally. This year's proceeding saw incremental gains in the areas of vegetation management, calculation of working capital allowance, and the interpretation of certain provisions relating to the Exogenous Event Adjustment. This ongoing engagement and review is an important feature of alternative regulation and key to its successful use.

Section 2(a)(6) of Title 30 directs the Department to represent "the interests of the consuming public in proceedings to change rate schedules . . . ." The Department did so in this case, as it has historically done, on behalf of all customer classes served by GMP.[17] The Department's advocacy in this rate proceeding saved GMP's customers $14.359 million, and secured virtually all of the adjustments recommended by our long-time rate consultant Larkin & Associates. Moreover, the value of the more regular periodic reviews of the company's costs and practices under alternative regulation is demonstrated by the Department's continuing engagement with the company on the issue of vegetation management. This activity is critical to the reliability of electric service and therefore important to the public. *See* 30 V.S.A. § 2(a)(3) (DPS to supervise the quality of service of public utilities). The formulaic adjustment of the company's allowed return also represents a savings for ratepayers of thousands of dollars that would otherwise be expended to retain and cross-examine experts. This savings is a direct result of the alternative regulation plan.

[17] Section 2(f) directs the Department to favor certain specified classes over others. This provision is not implicated by general rate proceedings since the interests of different customer classes are not adverse.