

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5980

Investigation into the Department of Public)	
Service's Proposed Energy Efficiency Plan)	Hearings at
Re: City of Burlington Electric Department's)	Montpelier, Vermont
Proposal to Implement Core Programs Within)	March 16 and May 3, 2000
its Service Territory)	

Order entered: 9/22/2000

**ORDER RE: APPROVAL OF CITY OF BURLINGTON ELECTRIC DEPARTMENT'S PROPOSAL TO
IMPLEMENT CORE PROGRAMS WITHIN ITS SERVICE TERRITORY**

PRESENT: Sandra A. Waldstein, Hearing Officer

APPEARANCES:¹ Aaron Adler, Esq.
for the Vermont Department of Public Service

William F. Ellis, Esq.,
McNeil, Leddy & Sheahan, P.C.
for City of Burlington Electric Department

1. There are many other parties to this Docket, all of whom were provided an opportunity to be present at the hearings; however, no other party appeared at these hearings.

I. INTRODUCTION

In the Order of September 30, 1999, in Docket 5980, the Public Service Board ("PSB" or "Board") approved a set of statewide programs ("Core Programs") for the delivery of energy efficiency services in Vermont by an Energy Efficiency Utility ("EEU"). As part of that Order the Board approved a Bilateral Agreement Between the Department of Public Service ("DPS" or "Department") and the City of Burlington Electric Department ("BED").² The BED Bilateral provides that the DPS "agrees to make a presumption that BED should have the right to implement the Core Programs in its service territory, subject to DPS and Board review of a BED proposal . . ." The BED Bilateral also sets forth the required contents of a BED proposal, and the standards for the Board's review of that proposal.³

BED filed its Proposal to Implement Core Programs within its Service Territory ("BED Plan") and subsequently the Department and BED stipulated to Board approval of the BED Plan. After an independent review of the BED Plan, I recommend that the Board approve the BED Plan as modified by the stipulations between BED and the DPS. As a condition of Board approval, the Board should require BED to comply with the recommendations of the Contract Administrator.⁴ I also recommend that the Board approve two stipulations between the DPS and BED submitted in conjunction with the BED Plan.

II. PROCEDURAL HISTORY

As required by the terms of the BED Bilateral, the BED Plan was filed on November 30, 1999. BED and the DPS subsequently entered into a stipulation ("BED Stipulation") filed on February 28, 2000, wherein those parties agreed that the Board should approve BED's proposal to implement Core Programs within its service territory as outlined in the BED Plan and as

2. Exh. DPS-MOU-21 ("BED Bilateral").

3. BED Bilateral, ¶¶ 2-3.

4. The Board retained a Contract Administrator to assist with its administration of the EEU. Under the terms of this contract, the Contract Administrator is directed to provide assistance to the Board in its oversight of BED's performance under the terms of the BED Plan.

modified by the stipulation.⁵ A technical hearing was held on March 16, 2000, to consider approval of the BED Plan.

At the technical hearing on March 16th, I expressed some concern over one unresolved issue, the savings goals and performance standards for BED. I was also concerned that there were a number of developments that had occurred since the filing of the BED Plan that might affect BED's implementation of the Core Programs. The Board had recently entered into contracts with Michael Wickenden to serve as the Contract Administrator ("CA") and Vermont Energy Investment Corporation ("VEIC") to serve as the EEU. BED had not yet had a chance to review those contracts in which the Board set out in detail its expectations for Core Program implementation by the EEU. The DPS and BED agreed to a continuation of the technical hearing so they could address those concerns and review these recently executed documents.

On April 3, 2000, the CA filed comments on the BED Plan and the BED Stipulation. On April 21, 2000, the DPS and BED filed an additional stipulation ("Second Stipulation"). Also on that date, BED prefiled the testimony of Thomas A. Buckley, Chris Burns and Loren Doe along with the exhibits referenced therein.⁶ On April 28, 2000, the CA filed additional comments with the Board on the Second Stipulation. A continued technical hearing was held on May 3, 2000. On May 8, BED filed a revised Exhibit BED-13.⁷ On May 26, 2000, BED and the DPS filed a joint proposal for decision ("PFD") and on June 2, 2000, the CA filed comments on that proposed decision.⁸

III. FINDINGS OF FACT AND CONCLUSIONS

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

5. Exh. Joint-1, ¶ 38 ("BED Stipulation").

6. Hereinafter referred to as BED prefiled.

7. BED submitted a revised Exh. BED-13 on May 8, 2000, to replace the version of the Exhibit entered into the record. If any party has an objection to the replacement of Exh. BED-13 with the revised version, they should file such objection within the comment period for the PFD.

8. BED and the DPS both stated at the hearing that they had no objection to the CA filing such comments. Tr. 5/3/00 at 127. If any other party objects to this filing, they should notify the Board within five days of receipt of this PFD.

A. Findings of Fact

(1) BED Bilateral

1. By Order dated September 30, 1999, the Board approved the bilateral agreement between BED and the DPS.⁹

2. The BED Bilateral sets out the requirements for a BED proposal to deliver Core Programs in its service territory, as well as minimum standards for approval that the Board should apply when reviewing the proposal.¹⁰

3. The BED Bilateral specifies that BED's proposal shall:

list the Core Programs BED proposes to implement;

- a. describe how BED intends to implement those programs;
- b. state whether it proposes to implement the Commercial & Industrial ("C&I") Customer Credit Program, and if so, how;
- c. describe how BED will coordinate with the EEU;
- d. describe how BED will ensure consistency of program delivery between itself and the EEU;
- e. include an itemized budget;
- f. explain how funds to implement the Core Programs and payments to the EEU will be secured and managed by BED;
- g. include proposed budgets for 2001 and 2002;
- h. include a proposal for how BED will evaluate and report on its implementation performance; and
- i. include a proposal for how BED's performance will be reviewed and evaluated by the Board.¹¹

(2) BED Proposal

9. See, Investigation into the Department of Public Service's proposed Energy Efficiency Plan Re: Phase II, Docket No. 5980, Order of 9/30/99 at 26-27 and Appendix U, A-106-11.

10. *Id.*

11. Exh. DPS-MOU-21 at ¶ 2.

4. The BED Plan, as modified by the BED Stipulation and the Second Stipulation, addresses each of the areas specified in the BED Bilateral.¹²

(a) List of Core Programs BED Proposes to Implement

5. BED has agreed to implement the following programs in its service territory so that they will have the same "look and feel" in BED's territory as they do throughout the rest of the state:

- a. Commercial and Industrial Market Opportunities;
- b. Commercial and Industrial New Construction;
- c. Residential New Construction;
- d. Residential Low Income Multifamily (REEP);
- e. Residential Low Income Single-Family; and
- f. Efficient Products.¹³

6. The EEU will implement the Emerging Markets Program in BED's service territory and BED will contribute directly to the EEU for the cost of running this program.¹⁴

(b) Description of How BED Intends to Implement Those Core Programs

7. Based upon the information that was reasonably available to BED as of November 30, 1999, the BED Plan specifies how BED intends to implement these Core Programs and, to the extent detailed numbers and program implementation specifics were not available, identifies the principles it will use to refine budgets and respond to specific program features.¹⁵

8. When implementing the Core Programs within its service territory, BED will use the same screening tools that the EEU uses, and has agreed to modify such tools in response to any Board-ordered or Board-approved modifications.¹⁶

9. With respect to the C&I New Construction program, the EEU is not expected to contribute to the costs of Act 250 inspections within the City of Burlington.¹⁷

12. Exh. BED-9.

13. *Id.* at 6-14; BED pf. at 3-4, 7.

14. Tr. 5/3/00 at 46-7 (Parker, Buckley).

15. Exh. BED-9 at 6-14.

16. Exh. Joint-1 at ¶ 6.

17. *Id.*

10. In the event BED utilizes subcontractors for the delivery of Core Programs, the DPS reserves the right to raise with the Board the issue of whether it is more efficient for BED to utilize the statewide structure rather than select a subcontractor.¹⁸

(c) C&I Customer Credit Program

11. BED does not propose to implement the C&I Customer Credit Program within its service territory because BED does not intend to implement an Energy Efficiency Charge ("EEC") within the next three (3) years against which such "credit" can be made.¹⁹

(d) Dairy Farm Program

12. BED does not propose to implement a Dairy Farm Program because there are no longer any farms within its service territory.²⁰

(e) Coordination Issues/Consistency of Program Delivery

13. BED's Plan envisions a high level of cooperation and coordination between BED and the EEU in order to maximize Core Program benefits.²¹

14. A goal of BED's Plan is to create a close working relationship between BED and the EEU.²²

15. BED and the DPS agree to continue to work together to ensure that any net societal benefits of BED's Core Program delivery outweigh any additional costs to EEU operations resulting from such delivery.²³

16. BED's Plan envisions a simultaneous rollout of the Core Programs within its service territory with the EEU's rollout in the rest of the State.²⁴

18. *Id.* at ¶ 35.

19. Exh. BED-9 at 15.

20. BED pf. at 7.

21. Exh. BED-9 at 15.

22. *Id.* at 16.

23. *Id.*

24. *Id.*

17. BED intends to use the same marketing materials and approaches as used by the EEU so that the Core Programs have an identical "look and feel" in order to support a consistent message and identity.²⁵

18. BED intends to participate fully in the EEU advisory committee and any appropriate subcommittees or working groups to stay close to the design process, and agrees to implement Core Program modifications as they are developed and adopted by the EEU.²⁶

19. BED will work with the EEU and the Contract Administrator to formalize coordination in the following areas: reporting formats; the roles of BED and the EEU; the transfer of funds; preliminary marketing issues; and a customer referral path.²⁷

20. The Board's contract with the EEU requires that the EEU submit a written coordination plan between BED and the EEU. BED agrees that attached to this plan should be any necessary contracts for services between BED and VEIC, specifying rates and responsibilities. This coordination plan should be updated by March 1, 2001 and 2002.²⁸

21. BED and the EEU are engaged in contract negotiations regarding coordination issues. It is anticipated that the EEU will provide some services to BED for which BED will compensate the EEU. The specific tasks and compensation are still being negotiated.²⁹ Possible tasks include the following:

- a. the EEU will manage the task of developing and printing all marketing materials for the Core Programs, as well as all marketing campaigns, and will charge BED for a portion of these costs based upon an appropriate cost-sharing formula;³⁰
- b. the EEU will develop and perform training programs, and staff special events, annual conferences, home shows, and the like -- tasks for which BED will compensate the EEU for an appropriate share of the costs the EEU incurs;³¹

25. *Id.*

26. *Id.*

27. *Id.*

28. Tr. 5/3/00 at 95 (Burns); exh. Board-2; EEU contract at Attachment A, p. A-9. The Board hereby takes administrative notice of its contract with VEIC. Pursuant to 3 V. S. A. § 810(4) should any party object to this notice, they should so note in their comments on this PFD.

29. Tr. 5/3/00 at 33-40 (Hamilton, Burns).

30. Exh. BED-10 at 4, 5, 6, 7, 9 and 10.

31. *Id.* at 4, 6, and 9.

- c. the EEU will provide training to BED on REEP program protocol, and BED will compensate the EEU for this training.³²

22. BED and the EEU agreed to finalize the agreements between them by June 30, 2000, with any disputes to be resolved by the Board.³³

23. BED agrees to submit any contracts for overall implementation of the Core Programs in BED's service territory, exceeding \$10,000, to the CA by June 1, 2000,³⁴ and February 1st of 2001 and 2002.³⁵

24. BED acknowledges that the EEU will incur costs for general coordination with BED, as well as costs associated with information technology ("IT") issues and program planning and design that cannot be applied to specific programs, and anticipates paying a monthly charge to the EEU as compensation for these costs.³⁶

25. Through either an agreement that demonstrates a high level of cooperation and coordination between BED and the EEU, or the resolution by the Board of any such disputed issues between them, consistency of program delivery between BED and the EEU will be provided, and the administrative efficiencies and program benefits of statewide delivery preserved.³⁷

(f) Adequacy of Proposed Budgets

26. In the BED Bilateral, BED committed \$410,000 for calendar year 2000 to fund Core Programs within its service territory.³⁸

27. BED's revised Core Program budget for calendar year 2000 is \$418,283.³⁹

32. Exh. BED-10 at 7.

33. Tr. 5/3/00 at 41 (Burns). The Board, to date, has not received notification of any dispute between BED and the EEU regarding these matters. If the agreement between BED and the EEU has not been finalized, the parties should so inform the Board in their comments on this PFD.

34. Since this date is now passed, I recommend that the Board extend the date of this submission until October 1, 2000.

35. Tr. 5/3/00 at 97-99 (Buckley).

36. Exh. BED-10 at 5.

37. Tr. 5/3/00 at 20-21, 38-41 (Burns).

38. Exh. DPS-MOU-21 at ¶ 1; exh. Joint-1 at ¶ 17.

39. Exh. BED-12.

28. BED has also proposed total budgets for calendar years 2001 and 2002 of \$520,423 and \$663,202, respectively.⁴⁰

29. BED agrees to contribute \$5,353 in the year 2000, \$80,250 in 2001, and \$173,875 in 2002 to the EEU for the Emerging Markets Program. These amounts are fixed. BED agrees to fund the Emerging Markets Program directly and provide monthly payments to the EEU for this program. BED will submit these payments to the Fiscal Agent in equal monthly installments.⁴¹

30. The details of the exact dollar amount and payment terms for BED's contribution to the EEU core functions budget for general administration and information technology will be determined through negotiations and ultimately set out in a contract between BED and the EEU, subject to Board resolution of any dispute. Those details were to be finalized by June 30, 2000.⁴²

31. With the exception of the budget numbers for the Emerging Markets Program, which are fixed, BED maintains the flexibility to allocate dollars among the various Core Programs.⁴³

32. BED agrees to commit more funds if necessary to meet its obligations with respect to delivery of the Core Programs within its service territory.⁴⁴

33. Notwithstanding the flexibility to allocate dollars among various Core Programs described above, BED will continue to allocate budget dollars equitably among rate classes.⁴⁵

34. Both BED and the DPS reserve the right to propose reasonable adjustments to BED's Core Program budgets based on implementation experience; such adjustments shall be subject to Board approval.⁴⁶

35. Based upon the foregoing, BED's proposed Core Program budgets are adequate and reasonable.⁴⁷

(g) Core Program Funding Mechanism

36. BED has been implementing DSM programs within its service territory for close to a decade. It has demonstrated a commitment to pursuing cost-effective energy efficiency, possesses

40. *Id.*

41. *Id.*; tr. 5/3/00 at 43-47 and 3/16/00 at 117 (Buckley).

42. Tr. 5/3/00 at 32-41 (Buckley); *see also*, Finding 22 above.

43. BED pf. at 6.

44. Exh. DPS-MOU-21 at ¶ 1.

45. BED pf. at 6.

46. Exh. Joint-1 at ¶ 21.

47. *See*, generally Findings 26-35 above; tr. 5/3/00 at 53 (Parker).

long-standing energy efficiency programs and an established, equipped, and trained DSM staff, and has a history of pursuing innovative energy efficiency ideas and technologies.⁴⁸

37. BED designed its DSM programs so that a portion of the funds used to implement projects was repaid to BED for use in operating future programs.⁴⁹

38. BED represents that this "revolving loan" fund has an adequate balance to fund BED's anticipated Core Program expenditures over the first three (3) years of Core Program operation, and for this reason, BED does not anticipate the need to implement an Energy Efficiency Charge within its service territory during this time frame.⁵⁰

39. BED shall notify the Board and the Department one (1) year in advance of when it anticipates a need to implement an Energy Efficiency Charge within its service territory. Upon Board approval, BED will implement the EEC in accordance with applicable Board Orders or agreements in place for the design of such charges at that time.⁵¹

40. Based upon the foregoing, the manner in which BED proposes to fund its Core Programs is adequate and reasonable.⁵²

(h) Evaluation and Reporting

41. BED will work with the EEU, the Contract Administrator and the DPS to modify its reporting content and format as necessary to dovetail with and include the same information as in the EEU's reporting mechanism(s) in order to allow all parties to quickly assess and evaluate BED's program efforts and performance.⁵³

42. BED agrees to provide to the Board, the Contract Administrator, the DPS and the EEU regular monthly, quarterly and annual reports (that dovetail with and provide the same information as the equivalent required EEU reports), along with any other information necessary to allow the Board to compare BED's and the EEU's performance.⁵⁴

48. Exh. BED-9 at 4-5; tr. 3/16/00 at 71-76 (Parker).

49. *Id.* at 17.

50. Exh. Joint-1, Appendix C.

51. Exh. Joint-1 at ¶ 25; tr. 3/16/00 at 84-6 (Buckley).

52. *See*, generally Findings 36-40 above.

53. Exh. Joint-1 at ¶ 28.

54. *Id.* at ¶ 31; tr. 3/16/00 at 139 (Buckley).

43. With respect to implementation of the Core Programs, BED will remain subject to traditional regulatory review of those Core Program expenditures.⁵⁵

44. BED and the DPS have agreed to savings goals for BED. The savings goals for BED are 1,119 MWh in 2000, 1,406 MWh in 2001, and 1,623 MWh in 2002.⁵⁶

45. BED and the DPS have agreed to performance standards for BED. There are nine performance indicators for residential programs, seven indicators for commercial and industrial programs, and four cross-program indicators. Some performance targets have been established; other targets and baselines will be determined later in conjunction with those established for the EEU. The agreed-upon performance standards are attached to this Order as Appendix A.⁵⁷

46. The savings goals and performance standards agreed to by BED and the Department reflect the savings and performance goals set by the Board for the EEU, given the achievable potential for each Core Program BED proposes to implement within its service territory.⁵⁸

47. BED's annual report of its activities and performance should include: (1) a program by program comparison of annual costs per annualized MWh with those of the EEU with a discussion of any variance greater than ten percent; (2) a market penetration analysis which compares BED's market penetration rates to those of the EEU with discussion of any variance greater than ten percent; and (3) an analysis of administrative costs comparing BED and the EEU's administrative costs on a percentage of total cost basis. BED should develop these indicators and submit them with their annual report to the CA, the DPS, and the Board one month after publication of the EEU's annual report.⁵⁹

48. BED's budget contains funds for a specific review and evaluation of its performance within its service territory, as well as separate funds BED intends to contribute to the EEU for statewide evaluation activities.⁶⁰

49. The evaluation of BED's territory-specific implementation shall be conducted or managed by the DPS in the same time frame as the statewide evaluation efforts required of the

55. BED Bilateral at ¶ 6.

56. Exh. Joint-2 at exhibit A.

57. *Id.* at exhibit B; tr. 5/3/00 at 69-74 (Burns, Buckley, Doe).

58. Exh. Joint-2.

59. Exh. Board-2; tr 5/3/00 at 19 (Burns).

60. Exh. Joint-1, Appendix B.

DPS under ¶18 of the approved Memorandum of Understanding filed in this docket on April 30, 1999.⁶¹

50. The Board will conduct a thorough review of BED's performance in connection with, and at the same time as, its review of whether to renew the EEU's original contract, and will determine as part of that process whether BED's approval to implement Core Programs should be renewed.⁶²

51. The DPS will formalize an evaluation plan by Core Program in collaboration with BED and submit the plan to the Board and the Contract Administrator by July 1, 2000, with annual revisions by March 1, 2001 and 2002.⁶³

52. The Board's review and evaluation of BED's implementation of Core Programs within its service territory will be based upon the savings goals and performance standards agreed to by BED and the Department. The Department will verify whether BED has met each of these goals and performance standards.⁶⁴

61. Tr. 3/16/00 at 139-140 (Buckley).

62. Exh. BED-9 at 18.

63. BED pf. at 12. Since this date has passed and the Board has not received this document, I recommend that the Board extend this filing date until October 1, 2000.

64. Exh. Joint-2; tr. 5/3/00 at 56-59 (Parker).

(3) Standard of Review of BED Plan

53. The BED Bilateral provides in part that "[t]he Board, after notice and opportunity for hearing, shall approve BED's proposal if it finds that the anticipated benefits of BED's delivery of Core Programs within its service territory outweigh the risks or potential inefficiencies of such delivery."⁶⁵

54. In making this determination the Board is to consider at least the following:

- a. the commitment and capability of BED to implement programs;
- b. the extent to which BED customers will be afforded Core Program services comparable to other utility customers in the state;
- c. the preservation of administrative efficiencies and program benefits of statewide delivery, giving due consideration to the benefits of BED delivery within its service territory; and
- d. the adequacy of BED's proposed budgets and allocations.⁶⁶

(4) Discussion

The comprehensiveness of the BED Plan as modified by the BED Stipulation and the Second Stipulation shows that BED is committed to implementation of the Core Programs within its service territory. The record reflects that throughout the years BED has shown that it is capable of providing cost-effective energy efficiency programs to its customers. The BED Plan is consistent with the Core Programs offered by the EEU, therefore, BED customers will be afforded the same opportunity as other utility customers in the state.

BED is self-funding its programs out of funds from a previously established revolving account. BED represents that this account currently has a balance sufficient to fund BED's implementation of the Core Programs through the end of 2002. While the Board could require BED to collect an EEC in BED's service territory at any time, there currently is no need to do so.

Giving due consideration to the benefits of BED delivery of Core Programs within its service territory, I conclude that administrative efficiency will be preserved through BED's implementation of these programs through 2002, assuming that BED and the EEU have successfully concluded negotiations on an agreement to detail the coordination details and funding

65. BED Bilateral at ¶ 3.

66. *Id.*

allocations between those two entities. I also find that BED's proposed budgets and allocations are adequate.

I have a slight concern, however, that the negotiations between BED and the EEU on coordination and funding allocations are not complete. An appropriate arrangement between them on these issues is necessary to ensure that administrative efficiency will be preserved. Subsequent to the Board's awarding of a bid and entering into a contract with Efficiency Vermont as the EEU, BED met with the EEU to work on coordination and contractual issues between the two entities.⁶⁷ On April 6, 2000, BED provided the EEU with a document entitled "Coordination Issues and Scope of Services," which sets forth a plan for how coordination between BED and the EEU can be successfully accomplished.⁶⁸ At the hearing, the Executive Director of the EEU testified that he had received this document and had made an alternative proposal to BED.⁶⁹ BED and the EEU were supposed to enter into an agreement by June 30, 2000, to formalize their coordination plan, with any disputes to be resolved by the Board. Since this date has now passed and the Board has not received a request for adjudication of any dispute, I assume that BED and the EEU have successfully concluded those negotiations and an agreement between them is in place. If this is not the case, then the parties shall bring this to the Board's attention in their comments on the PFD.

To the extent that the parties have not or cannot resolve any necessary matters regarding the relationship between BED and the EEU, the Board will retain jurisdiction.

B. Conclusions of Law

Section 209 of Title 30 authorizes the Board to appoint "one or more entities" to deliver energy efficiency services in the state and enumerates the criteria to be met before doing so.⁷⁰

55. The Board shall "[e]nsure that all retail consumers, regardless of retail electricity or gas provider, will have an opportunity to participate in and benefit from a comprehensive set of cost-effective energy efficiency programs and initiatives designed to overcome barriers to

67. Exh. BED-10 at 1; BED pf. at 4.

68. Exh. BED-10.

69. Tr. 5/3/00 at 100 (Hamilton).

70. Docket No. 5980, Order of 9/30/99 at 63.

participation.⁷¹ Since BED will be implementing the same Core Programs as approved by the Board in Phase II of Docket 5980, as modified in the Board's contract with the EEU, I conclude that the Core Programs to be implemented by BED are designed to overcome market barriers to the acquisition of energy efficiency programs.⁷² Further, the Core Programs "are cost-effective, reasonably comprehensive with respect to the market segments which they address, and open to all" of BED's customers.⁷³

56. The Board shall "[r]equire that continued or improved efficiencies be made in the production, delivery, and use of energy efficiency services."⁷⁴ By agreeing to implement program design changes as they are suggested by the EEU and approved by the Board, and through its position on the advisory committee to the EEU, BED will help ensure that improved efficiencies in energy efficiency services are realized.

57. The Board shall "[b]uild on the energy efficiency expertise and capabilities that have developed or may develop in the state."⁷⁵ BED has an established, equipped, and trained DSM staff and long-standing energy efficiency programs. Allowing BED to implement Core Programs in accordance with its proposal as modified by the stipulations, builds on BED's existing energy efficiency expertise and capabilities.

58. The Board shall "[p]romote program initiatives and market strategies that address the needs of persons or businesses facing the most significant barriers to participation."⁷⁶ I conclude that this objective is met because BED will be implementing the same Core Programs as the EEU, which are designed to overcome the market barriers presented by the lost opportunity and low-income retrofit markets.⁷⁷

59. The Board shall "[p]romote coordinated program delivery, including coordination with low income weatherization programs, other efficiency programs, and utility programs."⁷⁸ BED's Plan, as modified by the BED Stipulation, demonstrates BED's commitment to pursue a high level

71. 30 V.S.A. § 209(e)(1).

72. Docket No. 5980, Order of 9/30/99 at 64.

73. *Id.*

74. 30 V.S.A. § 209(e)(2).

75. 30 V.S.A. § 209(e)(3).

76. 30 V.S.A. § 209(e)(4).

77. *See*, Docket No. 5980, Order of 9/30/99 at 65.

78. 30 V.S.A. § 209(e)(5).

of cooperation and coordination between BED and the EEU.⁷⁹ BED has agreed to work with the EEU to develop a written coordination plan, including any contracts for services between BED and the EEU, and to have this plan finalized by June 30, 2000.⁸⁰ Since as of August 18, 2000, no issues regarding this agreement have been brought to the Board for resolution, I conclude that this objective has been met.

60. The Board shall "[c]onsider innovative approaches to delivering energy efficiency, including strategies to encourage third party financing and customer contributions to the cost of efficiency measures."⁸¹ As the Board noted in Phase II, the EEU is required to "refine the core program designs, as appropriate, in furtherance of several objectives, including but not limited to maximizing and facilitating customer contributions to measure costs and promoting other, creative approaches to energy efficiency."⁸² BED has a demonstrated history of pursuing innovative approaches to obtaining energy efficiency resources. Its ideas can be shared with the EEU through the EEU advisory committee of which BED is a member.

61. The Board shall "[p]rovide a reasonably stable multiyear budget and planning cycle and promote program improvement, program stability, and maturation of programs and delivery resources."⁸³ I find the budget agreed to by the DPS and BED satisfies this criterion.

62. The Board shall "[a]pprove programs, measures, and delivery mechanisms that reasonably reflect current and projected market conditions, technological options, and environmental benefits."⁸⁴ Since BED will be implementing the same Core Programs as approved in Phase II as modified in the Board's contract with the EEU, I find that this objective will be met.⁸⁵

63. The Board shall "[p]rovide for delivery of these programs as rapidly as possible, taking into consideration the need for these services, and cost-effective delivery mechanisms."⁸⁶ BED is presently working with the EEU to roll out the Core Programs within BED's service territory at the same time that they are rolled out in the rest of the state.

79. Exh. Joint-1 at ¶¶ 9-16.

80. Tr. 5/3/00 at 41 (Burns).

81. 30 V.S.A. § 209(e)(6).

82. Docket No. 5980, Order of 9/30/99 at 66.

83. 30 V.S.A. § 209(e)(7).

84. 30 V.S.A. § 209(e)(8).

85. *See*, Docket No. 5980, Order of 9/30/99 at 67.

86. 30 V.S.A. § 209(e)(9).

64. The Board shall "[p]rovide for the independent evaluation of programs delivered under subsection (d) of this section."⁸⁷ The Department will perform or manage the evaluation of BED's implementation of the Core programs at the same time as, and in connection with, the evaluation required under ¶18 of the Memorandum of Understanding.

65. The Board shall "[r]equire that any entity approved by the board under subsection (d) of this section deliver board-approved programs in an effective, efficient, timely, and competent manner and meet standards that are consistent with those in section 218c of this title, the board's orders in public service board docket 5270, and any relevant board orders in subsequent energy efficiency proceedings."⁸⁸ As set out in the BED Stipulation, the Board retains continuing jurisdiction to: (a) enforce the terms of its approval of BED's Core Program proposal, the BED Bilateral, and the stipulations; (b) settle disputes arising under the stipulations; and (c) during BED's implementation of the Core Programs, require BED to modify program design and/or delivery in order to ensure, pursuant to 30 V.S.A. § 209(e)(11), that BED delivers such programs in an effective, efficient, timely, and competent manner.

66. The Board shall "[r]equire verification, on or before January 1, 2003, and every three years thereafter, by an independent auditor of the reported energy and capacity savings and cost-effectiveness of programs delivered by any entity appointed by the board to deliver energy efficiency programs under subdivision (d)(2) of this section."⁸⁹ As noted above, the Department intends to prepare an evaluation of BED's implementation on the same schedule as the evaluation of the EEU.

67. The Board shall "[e]nsure that any energy efficiency program approved by the board shall be reasonable and cost-effective."⁹⁰ The Core Programs are reasonable and likely to be cost-effective.⁹¹

C. Conclusion and Recommendation

Based upon the foregoing findings of fact, after consideration of the factors set forth in 3.a. - d. of the BED Bilateral, and subject to the above-described resolution of matters pertaining

87. 30 V.S.A. § 209(e)(10).

88. 30 V.S.A. § 209(e)(11).

89. 30 V.S.A. § 209(e)(12).

90. 30 V.S.A. § 209(e)(13).

91. *See*, Docket No. 5980, Order of 9/30/99 at 68.

to the relationship between BED and the EEU, I find that the anticipated benefits of BED's delivery of Core Programs within its service territory, as outlined in the BED Plan and modified by the stipulations between the DPS and BED, outweigh the risks or potential inefficiencies of such delivery.

After review of the thirteen requirements that are to inform the Board's discretion in appointing an entity to deliver energy efficiency programs, I conclude that BED's proposal, as modified by the stipulations filed by the DPS and BED, and the recommendations set out herein, satisfies those requirements.

The Board also received comments from the Contract Administrator on both the BED Plan, BED prefiled testimony, the BED Stipulation and Second Stipulation, and the draft PFD. The Contract Administrator recommended a number of reporting requirements for BED. Those recommendations have been agreed to by BED and included in the findings.

Based on and subject to the foregoing, I therefore recommend that the Board approve the BED Plan and the stipulations between the DPS and BED filed in this matter on February 28, 2000, and April 21, 2000.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 21st day of September, 2000.

s/Sandra A. Waldstein

Sandra A. Waldstein

Hearing Officer

IV. BOARD DISCUSSION

We have reviewed the Hearing Officer's proposed decision and the Department's and BED's comments on that decision. Both parties support the proposed decision. In the PFD, the Hearing Officer made reference to an agreement between BED and the EEU that was supposed to be finalized by June 30, 2000. In its comments on the proposed decision, BED states that a signed agreement between BED and the EEU is now in place. BED further offers to make a copy of that agreement available to the Board. The Department recommends that the Board direct BED and the EEU to file copies of such agreements with the Board by October 2, 2000, and reserve jurisdiction to resolve any disputes, if any. We find the Department's request reasonable, and so order.

V. ORDER

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

1. The Hearing Officer's findings and recommendations are adopted.
2. BED's proposal to implement certain Core Programs within its service territory, as set forth in the BED Plan and as modified by the BED Stipulation and Second Stipulation and this Order, is approved.
3. The stipulations between BED and the DPS filed in this matter on February 28, 2000, and April 21, 2000, are likewise approved.
4. BED shall file copies of any agreements between BED and the EEU with the Board by October 2, 2000. The Board reserves jurisdiction to resolve any disputes that may arise under these agreements.
5. BED shall submit any contracts for overall implementation of the Core Programs in BED's service territory, exceeding \$10,000, to the Contract Administrator by October 2, 2000, February 1, 2001, and February 1, 2002.
6. BED shall file an annual report of its activities and performance with the Board, the Department, and the Contract Administrator one month after publication of the annual report of the EEU. BED's report shall include at a minimum: (1) a program by program comparison of annual costs per annualized MWh with those of the EEU, with a discussion of any variance greater than ten percent; (2) a market penetration analysis which compares BED's market

penetration rates to those of the EEU, with discussion of any variance greater than ten percent; and (3) an analysis of administrative costs comparing BED and the EEU's administrative costs on a percentage of total cost basis.

7. The Department shall file a BED evaluation plan by Core Program and submit the plan to the Board and the Contract Administrator by October 2, 2000, with annual revisions submitted by March 1, 2001, and March 1, 2002.

8. BED shall submit payments to fund the Emerging Markets Program to the Fiscal Agent on the 23rd day of each month.

9. BED shall notify the Board and the Department one (1) year in advance of when it anticipates a need to implement an Energy Efficiency Change within its service territory.

Dated at Montpelier, Vermont, this 22nd day of September, 2000.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
)	

OFFICE OF THE CLERK

FILED: September 22, 2000

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

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

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.