

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7081

Investigation into Least-Cost Integrated Resource	)	Hearings at
Planning for Vermont Electric Power Company, Inc.'s	)	Montpelier, Vermont
Transmission System	)	December 12 and 13, 2006

Order entered: 6/20/2007

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## **I. INTRODUCTION**

The Public Service Board ("Board") opened this docket on July 20, 2005, to investigate the obligations of Vermont Electric Power Company, Inc., now Vermont Transco, LLC (collectively, "VELCO") and the Vermont electric distribution utilities with respect to least-cost

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1. Barton Village, Inc. Electric Department, Village of Enosburg Falls Water & Light Department, Town of Hardwick Electric Department, Village of Jacksonville Electric Company, Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Morrisville Water & Light Department, Village of Northfield Electric Department, Village of Orleans Electric Department, Town of Readsboro Electric Light Department, Swanton Village, Inc. Electric Department.

integrated resource planning for VELCO's transmission system. In today's Order, the Board approves, with certain modifications and conditions, a Memorandum of Understanding ("MOU") signed by many, but not all, of the parties to this proceeding. The MOU sets forth a process that, according to its proponents, will facilitate least-cost integrated resource planning for Vermont's transmission system. For the reasons explained below, the Board has concluded that the transmission planning process set forth in the MOU substantially improves upon the current planning process for VELCO's system and represents a significant step toward realization of the ultimate goal of this proceeding: the full, fair and timely consideration of cost-effective non-transmission alternatives.

## **II. PROCEDURAL HISTORY**

In Docket No. 6860, the Board approved, with substantial conditions and modifications, a major upgrade to Vermont's bulk transmission system. In the Docket No. 6860 Order, the Board concluded that it had:

no viable option but to approve a transmission solution for a reliability problem that might have been either deferred or more cost-effectively addressed through demand-side measures or local generation, if there had been sufficient advance planning by VELCO and its owners. To avoid repeating this dilemma in a few short years, we have concluded that we should open a separate investigation into ways to ensure that cost-effective non-transmission alternatives are given full, fair, and *timely* consideration, and to determine methods for implementing (including funding) those non-transmission alternatives that bear lower societal costs than traditional transmission projects.<sup>2</sup>

Following the issuance of the Order in Docket No. 6860, the Board solicited comments from interested parties to help the Board determine the potential issues to be addressed and procedures to follow in an investigation into least-cost transmission planning for Vermont. On June 15, 2005, the Board held an informal workshop to further discuss these matters. Based on the input received, the Board opened this proceeding as a contested case to address the least-cost integrated resource planning obligations of VELCO and its owners.

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2. Docket No. 6860, Order of 1/28/05 at 11 (emphasis in original).

Also subsequent to the issuance of the Order in Docket No. 6860, the Vermont Legislature passed 30 V.S.A. § 218c(d) as part of Act 61, which the Governor signed into law on June 14, 2005.<sup>3</sup> Section 218c(d) includes requirements for a transmission-owning utility such as VELCO, which does not have a retail service territory, to prepare a transmission-system plan jointly with any other electric companies that own or operate these facilities, after public hearings and opportunity for input by the distribution utilities, the state's Energy Efficiency Utility (the "EEU"), the Vermont Department of Public Service ("DPS" or the "Department") and other entities. Section 218c(d)(1) states that "[t]he objective of the plan shall be to identify the potential need for transmission system improvements as soon as possible, in order to allow sufficient time to plan and implement more cost-effective nontransmission alternatives to meet reliability needs, wherever feasible." Act 61 also requires the distribution utilities to incorporate the transmission system plan into their own integrated resource plans. In its Order opening the current docket, the Board stated that provisions of Act 61 address some, but not all, of the issues regarding least-cost planning for Vermont's bulk transmission system that were identified in Docket No. 6860.<sup>4</sup>

On August 10, 2005, the Board convened a prehearing conference at which, following some discussion, the parties agreed that this docket should proceed in two phases, with an initial informational phase followed by a second phase for negotiations among the parties to attempt to settle the issues in this proceeding.

The initial phase was designed to provide the parties with information useful for this proceeding; toward this end, a steering committee consisting of representatives of some of the parties worked with a Board staff person to develop a series of informational workshops. During the initial phase, the parties also sought to reach agreement on a process for subsequent negotiations.

Concurrent with the first, informational phase of this docket, the Board established the specific issues upon which this investigation should focus. The Board included a preliminary list of issues with the July 20, 2005, Order Opening Investigation. After soliciting comments from

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3. P.A. No. 61, § 9 (2005 Vt., Bien. Sess.).

4. Docket No. 7081, Order of 7/20/05, at 2.

the parties, the Board issued an Order on October 7, 2005, identifying twenty specific issues to be resolved in this proceeding. (The list of issues is attached as Appendix A.) After identifying the specific issues, the Board:

reiterate[d] a fundamental point from both our decision in Docket 6860 (concerning VELCO's Northwest Reliability Project) and our Order that opened this investigation: we are particularly concerned that there be "sufficient advance planning by VELCO and its owners" to avoid finding ourselves in situations where the only viable solution to a reliability problem is a traditional transmission project.<sup>5</sup>

During the second, negotiation phase of this docket, the parties attempted to develop a comprehensive settlement with the assistance of a facilitator engaged by the Board. On September 6, 2006, following several extensions and 21 days of face-to-face negotiation sessions and numerous conferences, a number of the parties (the "Settling Parties")<sup>6</sup> filed a comprehensive bottom-line settlement to the docket issues in the form of a Memorandum of Understanding. The facilitator reported that the MOU represents a settlement on all issues by all Parties to the case, except that Conservation Law Foundation ("CLF"), the Village of Hyde Park Electric Department ("Hyde Park"), the Village of Johnson Water & Light Department ("Johnson"), and the Town of Stowe Electric Department ("Stowe"), having fully participated in the negotiations, decided not to sign the MOU, and that CLF intended to provide its comments to the Board under separate cover. CLF filed its separate comments on September 6, 2006.

A public hearing on the MOU was convened via Vermont Interactive Television ("VIT") at fourteen sites on December 5, 2006. Board members or staff moderated the VIT sites, located

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5. Order of 10/7/2005 at 4 (footnote omitted).

6. The Settling Parties are Associated Industries of Vermont ("AIV"), Barton Village, Inc. Electric Department ("Barton"), City of Burlington Electric Department ("BED"), Central Vermont Public Service Corporation ("CVPS"), Village of Enosburg Falls Water & Light Department ("Enosburg"), Green Mountain Power Corporation ("GMP"), Town of Hardwick Electric Department ("Hardwick"), Village of Jacksonville Electric Company ("Jacksonville"), Village of Ludlow Electric Light Department ("Ludlow"), Village of Lyndonville Electric Department ("Lyndonville"), Village of Morrisville Water & Light Department ("Morrisville"), Village of Northfield Electric Department ("Northfield"), Village of Orleans Electric Department ("Orleans"), Town of Readsboro Electric Light Department ("Readsboro"), Swanton Village, Inc. Electric Department ("Swanton"), Vermont Electric Cooperative, Inc. ("VEC"), VELCO, Vermont Marble Power Division of OMYA, Inc. ("Vermont Marble"), and Washington Electric Cooperative, Inc. ("WEC").

in Bennington, Brattleboro, Castleton, Johnson, Lyndonville, Middlebury, Newport, Randolph Center, Rutland, Springfield, St. Albans, Waterbury, White River Junction, and Williston.

Technical Hearings were held before the Board on December 12 and 13, 2006.

On February 2, 2007, the Department filed a letter responding to questions asked by Board staff at the technical hearings. The Department stated that AIV, CVPS, BED, GMP, VELCO, VEC and WEC concurred with the letter.

CLF and the Settling Parties filed direct briefs on February 1 and 2, 2007, respectively. CLF filed its reply brief on February 21, 2007. The Department filed a reply brief on February 23, 2007; the Department stated that its reply brief was supported by CVPS, BED, GMP, and VELCO. The Settling Utility Parties<sup>7</sup> also filed a reply brief on February 23, 2007.

### **III. COMMENTS OF THE PUBLIC**

The Board actively solicited public comment in this Docket. Notice of the public hearing was published in the *Burlington Free Press*, the *Rutland Daily Herald*, the *Times Argus*, the *Addison Independent*, the *Bennington Banner*, the *Valley News*, the *Caledonian Record*, the *Springfield Reporter*, the *Brattleboro Reformer*, and the *St. Albans Messenger*. In addition, the Board issued a press release announcing the public hearing to over a dozen newspapers and other media outlets. Despite the substantial efforts to provide notice of the public hearing, only three people chose to speak at the hearing, although there were some members of the public who attended but chose not to speak. However, the Board did receive over one hundred written comments, primarily in the form of e-mails.

Under Vermont law, our decision must be based upon the evidence presented by formal parties during the evidentiary hearings. However, public comments play an important role by raising new issues or offering perspectives that we should consider. Although it is not possible to address each individual concern, we summarize the primary comments below.

Nearly all commenters agreed that planning for future transmission lines needs to consider the importance of distributed generation for the future of Vermont and the weaknesses

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7. The Settling *Utility Parties* are Barton, BED, CVPS, Enosburg, GMP, Hardwick, Jacksonville, Ludlow, Lyndonville, Morrisville, Northfield, Orleans, Readsboro, Swanton, VEC, VELCO, Vermont Marble, and WEC.

of the older, centralized-generation model relied upon in the past. Further, almost all commenters felt that increasing demand for electricity should be addressed in a manner which minimizes negative land-use impacts and considers the dangers of climate change.

The chief concern expressed in the public comments is that the MOU does not take adequate steps to protect the environment. Some commenters felt that greater weight should be placed on limiting the clearing of natural areas and reducing the impacts on wetlands and woodlands from the use of herbicides. A number of commenters expressed concern that the MOU does not reflect the true cost of aesthetic damage to the environment.

Other comments urging greater environmental protection focused on the issue of climate change, brought on by the continued reliance on fossil fuels. Many of these commenters felt that the MOU should not allow the construction of new large-scale transmission lines which would allow electricity produced from fossil fuels to be imported from other states. These comments generally stated a preference for distributed generation and clean renewable energy, which they believed would become less economically competitive if large sums of money were invested in transmission lines connecting to out-of-state generation sources. A few commenters also felt that distributed-generation technologies, such as wind and photovoltaic generation, would decrease the danger of unplanned outages caused by downed trees falling on transmission lines. Others stressed the economic benefit of investing locally in generation, as opposed to purchasing electricity from outside of Vermont. A number of commenters stated that Vermont should lead the nation in a drive for cleaner and renewable energy production in the fight against climate change. They expressed concern over Vermont's dependency on fossil fuels, which could be perpetuated by planned investment in the transmission grid. Many commenters argued that alternatives such as investment in energy efficiency, education, alternative energy sources, and decentralized energy sources could alleviate the need for more transmission lines, and should be given priority status in the MOU.

The testimony of Johnson's manager, which we treat as public comment (as noted in the procedural history, above), opposes the MOU, contending that it goes beyond the requirements set out by Act 61 and creates a burdensome new layer of bureaucracy. Johnson's testimony stated that Act 61 is a comprehensive attempt to address energy policy in Vermont that has not been

given sufficient time to be implemented or evaluated. In addition, Johnson contends that the proposed public-input process will result in increased costs and delay of necessary improvements because ideological disputes will impede progress.

Some commenters felt that it is important to promote reliability in the electric grid, especially in the face of rising demand, the lack of major additions to the transmission system throughout the 1980's, and Vermont's non-compliance with industry reliability standards set by the North American Electric Reliability Council. One participant argued that the MOU does not sufficiently consider the positive externalities of investment in the grid, such as economic development and reduced cost volatility.

#### **IV. POSITIONS OF THE PARTIES**

The Settling Parties ask that the Board approve the MOU.

Four parties to this docket oppose the MOU: CLF, Johnson, Hyde Park, and Stowe. However, only CLF filed testimony and briefs in opposition to the MOU.<sup>8</sup>

CLF contends that the MOU does not achieve the intended purpose of creating an effective process that provides for equal treatment of non-transmission alternatives in addressing reliability problems. In particular, CLF raises four objections to the MOU:

- (1) The MOU sets up an overly cumbersome and bureaucratic process that fractures decision-making and responsibility;
- (2) The MOU limits public input;
- (3) The MOU weakens standards for evaluating projects; and
- (4) The MOU fails to treat non-transmission alternatives equivalent to transmission for funding.

The positions of the parties are addressed in more detail in the Discussion section, below.

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8. Johnson submitted prefiled testimony by its manager, Duncan Hastings, but did not appear at the technical hearing. After parties objected to the admission of the testimony without the witness present, the Board ruled that Johnson's testimony would not be admitted into the evidentiary record, and that it would instead treat Johnson's filing as a public comment. Tr. 12/13/06 at 79; Board Memorandum of January 3, 2007.

## V. FINDINGS

### Overall Structure of the MOU's Planning Process

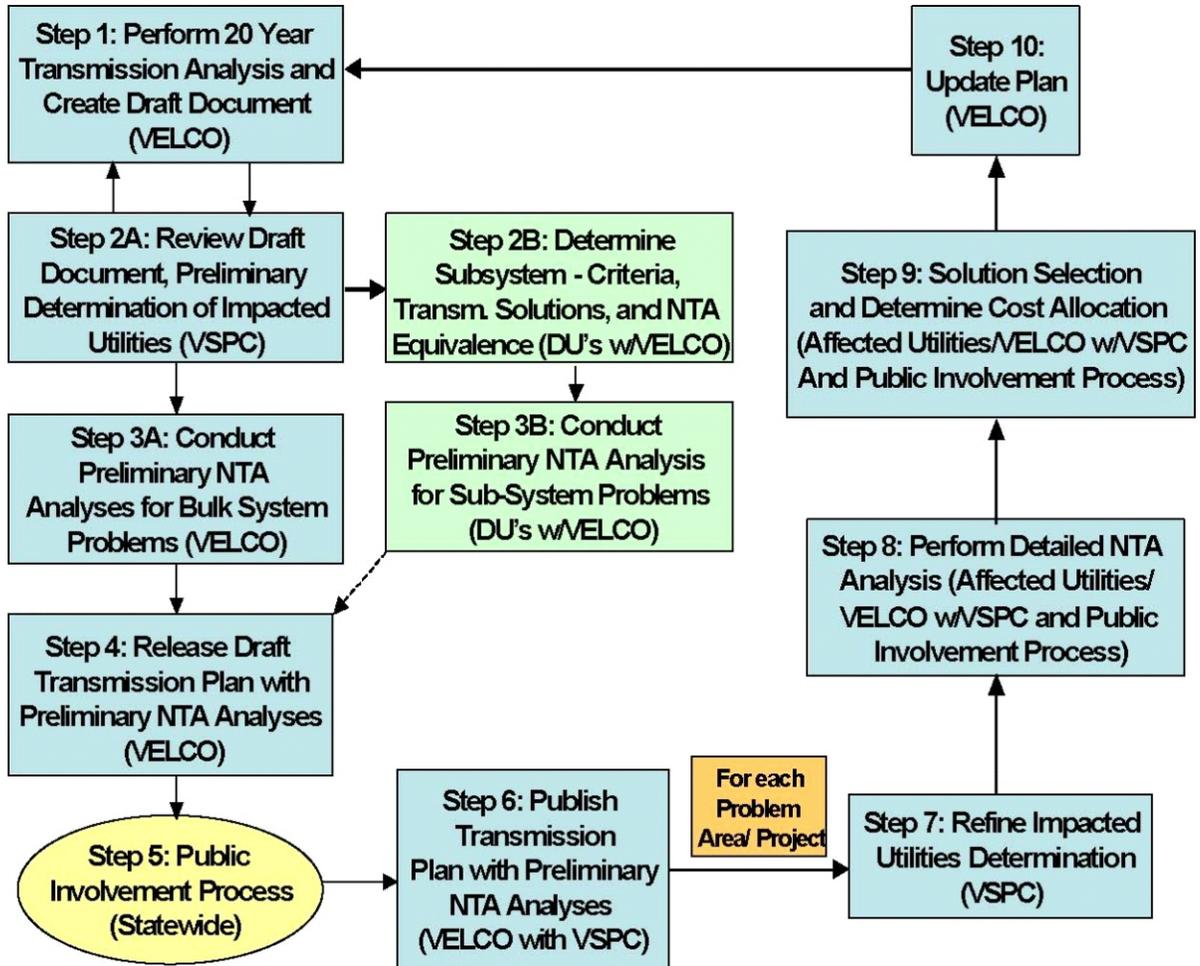
1. The MOU sets forth a new transmission planning process for Vermont. This process involves many different entities, including VELCO, the Vermont distribution utilities, the EEU, the Department, representatives of residential consumers, commercial and industrial consumers, and environmental protection interests, and members of the public, generally. The MOU is a lengthy document that provides considerable detail regarding the roles and responsibilities of these parties, the steps in the transmission planning process, various analytical issues related to consideration of non-transmission alternatives, and cost allocation issues, among other items.<sup>9</sup> Exh. MOU-1, *generally*.

2. The MOU describes a least-cost integrated resource planning process for Vermont's transmission system. The ten steps of this process, and the relationships among them, are shown in the following flow chart:

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9. Rather than repeat the details of the MOU in the Findings, we have included the MOU and its attachments as Appendices to this Order.

TRANSMISSION PLANNING PROCESS INCLUDING NON-TRANSMISSION ALTERNATIVES



Exh. MOU-1 at ¶ 1.

3. The MOU defines the roles of utilities and other entities in the transmission planning process. Exh. MOU-1, *generally*.

4. The MOU describes a process for:

- identifying reliability deficiencies;
- determining the performance specifications that non-transmission alternatives will need to meet to be considered equivalent to the transmission option for resolving the deficiency;
- analyzing possible non-transmission alternatives;
- obtaining public input; and
- selecting a solution to, or implementation strategy regarding, the reliability deficiency.

Exh. MOU-1 at ¶¶ 3–56.

5. The MOU defines how the costs of transmission, generation, and supplemental demand-side management costs of solutions to reliability deficiencies will be allocated among affected Vermont electric utilities. Exh. MOU-1 at ¶¶ 57–58.

6. The MOU defines the role of the EEU in the transmission planning process and addresses several issues related to analysis and implementation of demand-side management options. Exh. MOU-1 at ¶¶ 60–68.

7. The MOU creates the Vermont System Planning Committee ("VSPC"), defines its membership and its role in the transmission planning process, establishes its voting and procedural rules, and identifies its reporting requirements. Exh. MOU-1 at ¶¶ 69–90; findings 29–35, below.

8. The MOU includes goals and principles for conducting and structuring public involvement in the transmission planning process. The MOU provides that signatories will work together through the VSPC to reach agreement on actions to implement the stated public involvement goals and principles. Exh. MOU-1 at ¶¶ 91–97.

9. The MOU links the transmission planning process to information provided in a distribution utility's "ability-to-serve" letter pertaining to an application under 10 V.S.A. Chapter 151 ("Act 250"). Exh. MOU-1 at ¶ 98.

10. The MOU provides for further evaluation, in 2009, of the transmission planning process described in the MOU. Exh. MOU-1 at ¶ 99.

11. The MOU addresses the relationship between the MOU and area-specific collaboratives that are the subject of other Board proceedings. Exh. MOU-1 at ¶¶ 102–104.

12. The MOU allows distribution utilities to book, defer, and seek recovery in a subsequent rate case, their incremental costs incurred in implementing the MOU, subject to certain conditions. Exh. MOU-1 at ¶ 106.

#### Effectiveness of the MOU's Planning Process

13. The MOU, if approved, would improve the planning process for Vermont's bulk transmission system by establishing a clear set of standards, processes, institutional arrangements, and rules for a more coherent, timely, and meaningful transmission planning and implementation process. The MOU would thus create a planning environment that ensures that cost-effective non-transmission alternatives are given full, fair, and timely consideration relative to requirements for transmission service and reliability concerns. In broad terms, the MOU advances this objective by: (1) expressly requiring consideration of non-transmission alternatives at various steps of the planning process; (2) encouraging better coordination among the utilities; (3) creating frameworks for more timely decision-making; (4) creating more avenues for meaningful public participation in the process by increasing public access and transparency, and by timing public engagement at the most meaningful junctures in the process when public input can influence the decision on the strategy to be advanced to resolve reliability and supply concerns; (5) providing standards by which non-transmission alternatives can be evaluated; (6) establishing a longer planning horizon; and (7) encouraging market-based solutions. Allen pf. at 2, 5 and 9; findings 14–60, below.

*Consideration of Non-transmission Alternatives*

14. Consideration of non-transmission alternatives to reliability deficiencies is incorporated into many of the steps in the planning process set forth in the MOU. Findings 15–27, below.

15. In Step 1 of the MOU planning process, VELCO will prepare a draft Long-Range Transmission Plan. This Plan will describe each potential reliability deficiency that VELCO has identified. These reliability deficiencies will be classified as either bulk transmission system, predominantly bulk system, subsystem, or predominantly subsystem, depending upon the type of facilities that are involved in the likely transmission solution. The Draft Plan will also include, for each identified bulk transmission system or predominantly bulk system reliability deficiency, the performance specifications that non-transmission alternatives will need to meet to achieve equivalence with the likely transmission solution. Exh. MOU-1 at ¶¶ 4, 9, 113.e, 113.ee, 113. ff, 113.kk.

16. In Step 2B of the MOU planning process, for each subsystem or predominantly subsystem reliability deficiency included in the Draft Plan or otherwise identified by a distribution utility, each affected utility will identify the performance specifications that non-transmission alternatives will need to meet to achieve equivalence with the likely transmission solution. Exh. MOU-1 at ¶ 18.

17. As defined in the MOU, a non-transmission alternatives analysis is

an analysis to identify cost-effective and viable [non-transmission alternatives] to address a Reliability Deficiency that provide Equivalence, compare those alternatives to the likely Transmission-only alternative(s) to address the deficiency, and evaluate which alternative is the best choice to address the deficiency. Such identification and analysis also shall include viable alternatives to address the deficiency that encompass both Transmission and non-transmission elements.

Exh. MOU-1 at ¶ 113.z.

18. In Step 3A of the MOU planning process, VELCO will perform a preliminary non-transmission alternatives analysis for each bulk transmission or predominantly bulk system reliability deficiency. This preliminary analysis will utilize a simplified screening tool with assumptions about the potential and cost for generation and demand-side management options. The preliminary analysis will also consider whether non-transmission alternatives can be

implemented in a timely manner to address the reliability deficiency. The preliminary analysis will be designed to screen from further analysis only those projects that have no reasonable likelihood of being cost-effectively addressed by non-transmission alternatives. Exh. MOU-1 at ¶ 21.

19. In Step 3B of the MOU planning process, each affected utility (or affected utilities, jointly) will conduct a preliminary non-transmission alternatives analysis for each subsystem or predominantly subsystem reliability deficiency. Exh. MOU-1 at ¶ 25.

20. In Step 4 of the MOU planning process, VELCO will release its Draft Plan for public review. This Draft Plan will include the results of preliminary non-transmission alternatives analyses conducted in Steps 3A and 3B (provided such analyses are completed in time for VELCO to meet the scheduling requirements contained in 30 V.S.A. § 218c(d)(1)). If a detailed non-transmission alternatives analysis is not recommended for a particular reliability deficiency, the Draft Plan will also include the reasons for such a recommendation. Exh. MOU-1 at ¶¶ 22, 28.

21. In Step 6 of the MOU planning process, VELCO will consider the public input obtained during Step 5, revise the Draft Plan as needed and publish the Plan. The Plan will include all information required to be in the Draft Plan, including the results of non-transmission alternatives analyses, and the reasons for any determinations not to conduct a detailed analysis for any particular reliability deficiency. Exh. MOU-1 at ¶ 30.

22. In Step 8 of the MOU planning process, each identified reliability deficiency will undergo a more detailed non-transmission analysis, unless the preliminary non-transmission alternatives analysis conducted in Steps 3A or 3B indicates that non-transmission alternatives are not potential viable alternatives to a transmission solution for a particular reliability deficiency. Exh. MOU-1 at ¶ 22, 26.

23. The MOU includes a rebuttable presumption that a more detailed non-transmission alternatives analysis should include a market test, which could be a Request for Proposals or a public solicitation of interest. The MOU also provides that vendors of potential non-transmission alternatives should be encouraged to voluntarily contact distribution utilities and the

Department, and for those entities to meet to discuss these potential non-transmission alternatives. Exh. MOU-1 at ¶¶ 38, 39.

24. The MOU includes rebuttable presumptions regarding what avoided costs, environmental externality adders and risk adjustments are to be used during the analysis of non-transmission alternatives. Exh. MOU-1 at ¶¶ 45, 46.

25. The MOU provides that detailed non-transmission alternatives analysis for all reliability deficiencies identified in the Plan should be completed within one year of the Plan's publication unless a different date is established for a particular reliability deficiency in Attachment F to the MOU or through the process set forth in Paragraph 51 of the MOU. Exh. MOU-1 at ¶¶ 47, 51; exh. MOU-7.

26. The MOU addresses the issue of equivalence between transmission and non-transmission alternatives. The MOU establishes clear standards of performance for transmission planning to include consideration of non-transmission alternatives. The MOU requires that the Transmission Plan include performance specifications and key drivers that non-transmission alternatives will need to meet to achieve equivalence. These will help to define the scope, timing, and scale of potential non-transmission alternatives. Allen pf. at 7; exh. MOU-1 at ¶ 113.p.

27. The MOU's transmission planning process will give early consideration of non-transmission alternatives through preliminary non-transmission alternative analysis. It will provide preliminary information on all potential projects, including cost information, and it will be of sufficient length to enable resources like demand-side management to be given due consideration early enough to make a difference in the scope or timing of transmission projects. Allen pf. at 7.

#### *Coordination*

28. The MOU establishes a framework for more effective coordination in the transmission planning process. It does so by creating a new entity, the VSPC, which will help facilitate better cooperation and coordination among utilities in considering both transmission and non-transmission alternatives after a Long-Range Transmission Plan is in place. The MOU further

improves coordination by establishing clear lines of responsibility for providing and sharing information among VELCO, distribution utilities, the Department, and the EEU. This coordination will include the sharing of information about subsystem reliability deficiencies, state, regional or utility-specific forecasts, demand-side-management program projections, and coordinated planning assumptions. It will also include coordination with the EEU concerning program targeting and achievements. Allen pf. at 5.

*The VSPC*

29. The VSPC is intended to establish cohesion and coordination among Vermont's 20 distribution utilities, VELCO, the EEU, and the Department. Allen pf. reb. at 3-4.

30. The MOU provides that the purposes of the VSPC would be the following:

- a. Coordinate among the Vermont utilities in the provision of information for, and comments on, the Long-Range Transmission Plan.
- b. Facilitate and support the full and fair consideration by Vermont utilities of Non-transmission Alternatives in the resolution of Reliability Deficiencies.
- c. Provide transparency and accountability to the Vermont transmission-planning process through open meetings and regular reporting to the Board and Department on the status of the identification of Reliability Deficiencies, and the analysis, selection, and implementation of solutions to Reliability Deficiencies.
- d. Encourage and facilitate the resolution of disputes regarding the determination of Affected Utilities with respect to a Reliability Deficiency or a proposed resolution of a Reliability Deficiency, and disputes among Affected Utilities relating to the selection of options to address a Reliability Deficiency.
- e. Encourage and facilitate the informed involvement of the public in Vermont transmission planning in general and in the consideration of specific projects.
- f. Recommend to the Board and Department ways in which the transmission-planning process outlined in the MOU might be improved.
- g. To the extent agreements are not reached, take advisory votes on Affected Utility determinations and solutions to Reliability Deficiencies and their cost allocation and associated implementation strategy.
- h. Take votes that bind the voting participants in the VSPC on whether a Reliability Deficiency is Bulk System, Predominantly Bulk System, Subsystem, or Predominantly Subsystem (in the event VELCO and the

Distribution Utilities cannot agree), on the identification of a Lead distribution utility to conduct detailed Non-transmission Alternatives Analysis for a Reliability Deficiency (in the event the Affected Distribution Utilities cannot agree), on whether to conduct an executive session, and on the adoption of rules of procedure.

Exh. MOU-1 at ¶ 70.

31. The MOU provides that each Vermont electric utility would appoint a voting participant to the VSPC. In addition, the Board would appoint three public members, who would be voting participants, to the VSPC. These public members would articulate the interests of the following groups (with one public member representing each group): residential consumers; commercial and industrial consumers; and environmental protection. Finally, the VSPC would have three non-voting participants, one each appointed by the EEU, the Sustainably Priced Energy Enterprise Development Facilitator ("SPEED facilitator"), and the Department. Exh. MOU-1 at ¶¶ 71-74.

32. The VSPC will record votes on matters arising under Paragraphs 70.g and 70.h of the MOU by sector, in accordance with Attachment E of the MOU. The three public members comprise one such sector. Exh. MOU-1 at ¶ 88; exh. MOU-6.

33. It is reasonable to provide some type of compensation to the public members of the VSPC for the time and energy they devote to attending VSPC meetings. The appropriate entity to provide such compensation to the public members of the VSPC may differ depending upon the type of VSPC meeting (broad group or subcommittee) and the part of the transmission system that is the subject of the meeting (bulk transmission, sub-transmission). Tr. 12/12/06 at 73-74 (Allen); tr. 12/12/06 at 113 (LaForest); tr. 12/12/06 at 147 (Bentley).

34. The meetings of the VSPC and any of its subcommittees would be open to the public. The time, place, and agenda for all meetings of the VSPC and any of its subcommittees would be published, and posted on the VSPC website, in advance of the meetings. Minutes of the meetings of the VSPC and any of its subcommittees would be posted on the VSPC website and would be publicly available. Records and documents of the VSPC would be publicly available; however, the VSPC would be allowed to withhold from disclosure records and documents that meet one or more of the exemptions listed in 1 V.S.A. § 317(c), unless the Board compels disclosure thereof after notice and opportunity for hearing. Exh. MOU-1 at ¶¶ 75, 76, 81, 82.

35. The MOU requires that, commencing in 2008, the VSPC provide an annual report to the Board and Department consisting of at least the following:

- a. A report on each Reliability Deficiency identified to date in the Long-Range Transmission Plan or through the process described in planning Steps 1 through 6, including:
  - i. The status of non-transmission alternatives analysis for the Reliability Deficiency.
  - ii. The status of decision-making on the selection of alternative(s) to address the Reliability Deficiency.
  - iii. The status of decision-making on the allocation of costs of the alternative to address the Reliability Deficiency.
  - iv. The strategy chosen for implementing the alternative selected to address the Reliability Deficiency.
  - v. The status of implementation of the alternative(s) to address the Reliability Deficiency.
  - vi. All documentation pursuant to MOU paragraph 86 relating to advisory votes within the preceding calendar year.
- b. A statement of the dates and locations of all VSPC meetings held during the preceding year.

This annual report will be posted on the VSPC website. Exh. MOU-1 at ¶¶ 89, 90.

#### CLF Alternative Structure for VSPC

36. CLF proposes an alternative structure for the VSPC, in which the VSPC would be separate and independent. This alternative VSPC would have its own staff for reviewing and analyzing VELCO's transmission plan, and for ensuring that non-transmission alternatives are analyzed fairly. Under CLF's proposal, the VSPC would be responsible for the public review process. The alternative VSPC would be responsible for recommending a least-cost solution, and would provide that recommendation to VELCO and/or the distribution utilities for implementation. Peterson pf. at 8.

37. Establishment of a new, independent transmission planning entity in Vermont with the primary responsibility for coordinating analysis of non-transmission alternatives, as proposed by CLF, would contribute to fragmentation of the process, and involve entities that have no

fundamental responsibility for continued reliable operation of the electric system. Establishing such a third party to conduct transmission planning would also be inefficient, and could be divisive. Allen pf. reb. at 4–5; Bentley pf. reb. at 6–7; tr. 12/12/06 at 50 (Allen).

*Other enhancements in coordinated transmission planning*

38. The MOU gives the EEU a defined role relating to forecasting demand savings for planning activities. The MOU also provides that the EEU is to be a non-voting participant of the VSPC, and as such the EEU would have the opportunity to participate and assist in planning activities. This level of formalized involvement and integration of the EEU's demand-side management planning efforts has not occurred in the past. Tr. 12/12/06 at 97 (LaForest).

39. The MOU builds on the previous distributed utility planning principles from Docket 6290 and incorporates the steps necessary to integrate the bulk transmission facility planning process with the subsystem and distribution planning processes currently in the individual distribution utility integrated resource plans. Bentley pf. at 3.

40. In order to perform effectively, a planning entity would require the cooperation of the electric distribution utilities, VELCO, the EEU, and the Department. Allen pf. reb. at 4.

41. Vermont's electric distribution utilities have several mechanisms for ensuring reliable service, including managing the system and the load through transmission and distribution planning and investments, through generation, including distributed generation, through rate design and interruptible rates, and, in the case of distributed utility planning, through demand-side management. Allen pf. reb. at 4.

*Timely Decision-Making*

42. The VSPC helps ensure timely consideration of non-transmission alternatives (or transmission alternatives where non-transmission alternatives are not viable). Any unwarranted delays in decision-making should be revealed through its transparent planning processes and through the VSPC's annual progress reports to the Board on all projects identified in the Long-Range Transmission Plan. Allen pf. at 6, 9.

43. As a transition measure, the MOU establishes a formal time frame for analysis and implementation of non-transmission alternatives for a short list of initial projects. More generally, the MOU establishes clear time frames for analysis of, and decisions concerning, solutions to reliability deficiencies. The MOU includes provisions by which these time frames can be altered through the creation of a priority list by the VSPC that is filed with the Board. Allen pf. at 5-6.

#### *Public Participation*

44. The MOU helps ensure that the public engagement efforts are timely and there is effective public engagement in the planning process when public input can help influence decisions on the resolution of planning issues. The MOU establishes principles for public engagement and helps ensure that certain preconditions are in place, such as information about viable alternatives, including non-transmission alternatives. This opportunity for public involvement comes in the form of an open meeting on the Draft Plan, complete with information about the potential for non-transmission solutions (through preliminary non-transmission alternatives analyses). While public meetings on the Draft Plan are required by Vermont law, provisions of the MOU add further detail about what will be contained in the Draft Plan that is shared with the public. Further public involvement is to occur during project-specific reviews after a Long-Range Transmission Plan has been completed. Allen pf. at 6.

45. Currently, no single entity is responsible for coordinating public involvement in Vermont's transmission planning; the VSPC will provide this function. The VSPC will help coordinate work and information related to the consideration of transmission and non-transmission alternatives after a Long-Range Transmission Plan is in place. The VSPC will also provide that information to the public, and will serve as the public forum where transmission planning work within the state of Vermont is discussed and reviewed. This group will be actively consulted during the creation of the Transmission Plan, any ensuing evaluation of potential reliability concerns identified in the Transmission Plan, and consideration of equivalent alternatives that might address a reliability deficiency. Allen pf. at 5; Laforest pf. at 4-5; tr. 12/12/06 at 93 (LaForest).

46. The VSPC will be subject to the requirements of open meetings under Title 1 of the Vermont Statutes, complete with requirements to maintain records of meetings. The VSPC will make its meeting materials available to the public so that utility infrastructure decision-making may be both more participatory and transparent. Allen pf. at 6; Laforest pf. at 6; tr. 12/12/06 at 93 (LaForest).

*Clarification of Standards of Review*

47. The MOU attempts to clarify certain standards of review, such as the economic test that would apply in any given circumstance. Paragraph 40 of the MOU provides that:

Once alternatives to the likely Transmission-only solution to a Reliability Deficiency have been identified, each alternative, including the Transmission-only solution, will be analyzed under the standard described in 30 V.S.A. § 218c(a)(1). This analysis will include an evaluation of each alternative under the societal test, and an evaluation of each alternative with respect to other factors, including but not limited to:

- a. The relative rate and bill impacts on Vermont consumers (analyzed both with and without Vermont's share of the regional [pool transmission facilities] cost allocation, and taking into account [renewable energy credits] and tax credits), assessed on a life-cycle basis over the life of each alternative;
- b. The relative financial feasibility of each alternative, including viability as a standalone project, whether amortization and financing is required, which entity is in the best position to undertake financing, and credit rating impacts on affected persons or entities;
- c. The ability of each alternative to be implemented in a timely manner to address the Reliability Deficiency, including but not limited to issues relating to siting, local environmental impacts, obtaining necessary property rights, securing required governmental approvals, and existence of or necessity to construct supporting infrastructure;
- d. The relative economic benefits to the state, including access to other power markets; and
- e. Other significant relevant costs and benefits particular to the set of alternatives under consideration.

Allen pf. at 8; exh. MOU-1 at ¶ 40.

48. In addition to utilizing the societal test, the Board may appropriately consider other issues in reaching its ultimate decision, including the considerations enumerated in the previous finding. Tr. 12/13/06 at 25–26 (Peterson).

49. Any time that customer resources are leveraged as part of the resource-selection process, total costs (including both utility, ratepayer, and environmental costs) must be included in the evaluation of the alternatives. The societal test should remain the principal touchstone in project evaluation and selection. At the same time, it is appropriate for the applicable economic test to be applied in a manner that includes reasonable consideration of factors such as rate and bill impacts, project timeliness, market opportunities, impacts on the ongoing creditworthiness of Vermont utilities and access to capital. These considerations are already incorporated into the distributed utility planning process established in Docket 6290 for projects that are the subject of area-specific collaboratives. Allen pf. at 8.

*Other Improvements Over the Current Planning Process*

50. The MOU addresses several issues in the transmission planning process that are not expressly covered under existing planning standards, practices, or the statutory requirements of Act 61. Allen pf. at 2; tr. 12/12/06 at 36-37 (Allen); tr. 12/12/06 at 137 (Bentley).

51. The MOU establishes a longer planning horizon than that required pursuant to 30 V.S.A. § 218c(d). Currently, at both the state and regional level, transmission planning is largely limited to a ten-year horizon. The MOU commits VELCO and Vermont distribution utilities to use a 20-year planning horizon in their review of potential transmission projects. A horizon of this length is preferable to the statutory minimum of 10 years because some non-transmission alternatives require longer lead times in order to serve as viable alternatives to avoid or defer transmission solutions. Allen pf. at 7; exh. MOU-1 at ¶ 5.

52. The change from a 10-year to a 20-year planning horizon is a significant change in terms of planning efforts and scope. Tr. 12/12/06 at 133 (LaForest).

53. The EEU does not currently prepare 20-year projections nor are demand-side management program projections regularly shared. Tr. 12/12/06 at 21, 43 (Allen).

54. The VSPC's annual reports to be filed with the Board will identify and list system deficiencies, describe progress on identified reliability deficiencies, and document the alternatives considered. This is an improvement and enhances the transparency of the issues and approaches to solutions, as to date there has not been a compilation of all of these sets of information in a single place, with an annual update, with input from responsible entities throughout the state. Allen pf. at 6; tr. 12/12/06 at 108-109 (LaForest).

55. The MOU adds to, and details the implementation of, the Long-Range Transmission Plan requirements of 30 V.S.A. § 218c(d). For example, the MOU assures that the standards of 30 V.S.A. § 218c(d)(1)(A)-(D) apply to the entire transmission system in Vermont that is subject to 30 V.S.A. § 248, or would be subject to that statute if it were built today. In addition, paragraph 28 of the MOU lists many requirements for the Plan not specifically required by 218c(d)(1), including making a preliminary determination of affected distribution utilities, and identifying the distribution utility responsible for completing a non-transmission alternatives analysis where warranted. The MOU would also serve to implement the legislative framework by establishing aspects of the planning process and coordinating bodies that will help ensure timely resolution to emerging reliability concerns. Allen pf. at 2-4.

56. The MOU, if approved, would result in greater opportunity for the market to provide solutions to potential reliability concerns. Allen pf. at 7-8.

57. The MOU encourages consideration of market alternatives by first creating a more open and transparent transmission planning environment through the VSPC and the Long-Range Transmission Plan. The MOU also establishes a standing "open door" mechanism for providers of potential non-transmission solutions to notify VELCO or the Vermont distribution utilities of a viable alternative. It also encourages these utilities to rely on a formal market test, such as a Request for Proposals process, before selecting a solution to a given problem. Together these strategies should enable energy service companies, merchant generators, customers, the EEU and others to offer or bid on solutions to reliability needs identified in the Plan. Allen pf. at 8.

58. The MOU attempts to provide more clarity over issues of costs and cost uncertainty by defining the standards of cost allocation that would apply to non-transmission alternatives. The MOU does not attempt to change the standards of cost allocation and recovery of transmission

solutions. Rather, the MOU attempts to extend the standards to cover non-transmission alternatives to minimize the potential for uncertainty over cost assignment and recovery issues to unnecessarily impede project development. The MOU provides that, if generation and/or demand-side management can defer or avoid the construction of transmission facilities, the costs of the generation and/or demand-side management shall be allocated to Vermont distribution utilities in the same manner as the costs of avoided transmission facilities would have been allocated. Allen pf. at 9; exh. MOU-1 at ¶¶ 57.b., 57.c.

59. The MOU framework generally precedes the filing of a petition under Section 248, and the kinds of work contemplated under the MOU would be relevant to demonstrating compliance with some criteria of Section 248. Therefore, the MOU should help to promote the presentation of thorough analysis and evidence, informed by a higher level of public and stakeholder exposure and involvement, during Section 248 proceedings than otherwise would occur. In addition, the processes outlined in the MOU may defer or avoid Section 248 filings for transmission upgrades. Allen pf. at 4.

60. The MOU, if approved, would increase the accountability for transmission-system planning and implementation. The increased transparency of the planning process, along with the annual VSPC filings with the Board, should reveal any unwarranted delays in decision-making. More broadly, the MOU establishes a clear set of standards, processes, institutional arrangements, and rules for a more coherent, timely, and meaningful transmission planning and implementation process. Allen pf. at 7–9.

#### Future Modifications of the MOU

61. Paragraph 110 of the MOU states that:

The Parties acknowledge that Board approval of this MOU does not bar the Board, in a subsequent docket, from modifying the Transmission planning structure or terms described in this MOU after providing notice and opportunity for hearing to all Parties.

Exh. MOU-1 at ¶ 110.

62. The MOU signatories intended that the Board would provide the MOU signatories with notice and an opportunity for hearing before modifying the MOU. The MOU signatories did not

intend that the Board would automatically open a docket in order to make modifications to the MOU. Tr. 12/12/06 at 66 (Allen); tr. 12/12/06 at 116-117 (LaForest); tr. 12/12/06 at 148 (Bentley).

63. The MOU also provides that nothing in the MOU "shall be deemed to lessen or compromise the jurisdiction of the Board under title 30 of the Vermont statutes." Exh. MOU-1 at ¶ 88.

## **VI. DISCUSSION**

The primary focus of this docket, as announced in the final Order in Docket No. 6860, the Order opening this investigation, and the October 7, 2005, Order re Scope of Issues, has been to explore methods to ensure full, fair and timely consideration is given to cost-effective non-transmission alternatives and the implementation of such alternatives.

We have carefully considered the merits of the planning process set forth in the MOU, paying particular attention to CLF's criticisms of the MOU. While the MOU planning process may not fully resolve all of the concerns and challenges surrounding the long-term planning for Vermont's bulk transmission system, we conclude that we should approve the MOU (with minor modifications) for the following, fundamental reasons.

First, the MOU planning process represents a substantial improvement over the status quo.<sup>10</sup> The MOU provides for a better coordinated planning process, including coordination of planning for both the bulk transmission system and the nonbulk transmission elements. The MOU provides for a planning process that is more timely and that reflects a longer planning horizon. The MOU provides for a more public planning process, with more information being provided to the public earlier, and the public being accorded a larger and earlier voice in transmission planning. The MOU requires that non-transmission alternatives be given early consideration in the planning process, provides clearer standards for evaluation of non-transmission alternatives, and accommodates market-based solutions. Through provisions designed to identify existing and potential reliability deficiencies and to address the utilities'

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10. See Findings 14–60, above.

responsibility and accountability for such deficiencies, the MOU should enhance the reliability of Vermont's transmission system.

Second, no party to this proceeding has provided the Board with a viable alternative proposal that would better address the challenges/issues of Vermont's transmission planning.<sup>11</sup>

CLF has raised concerns which may have some merit as to whether the MOU transmission process will fully solve the problems that the current investigation was designed to address. (We discuss CLF's contentions below.) We believe, however, that for the reasons stated above and as set forth in our findings, the MOU will result in improvements in Vermont's transmission-planning process, such that non-transmission alternatives will receive more complete, fairer, and more timely consideration. At the same time, we acknowledge that the MOU planning process may not represent a final product. While it represents a significant step in the right direction, there may be further improvements possible.

The recognition of, and accommodation for, such possible improvements is one of the strengths of the MOU. The MOU provides for further evaluation (in 2009) of the transmission planning process. At that time, we will provide all interested persons an opportunity to file comments on that evaluation; based on those comments, or on our own motion, we may then conduct further investigation into whether the transmission-planning process should be modified.<sup>12</sup> This will provide the Settling Parties, all VSPC participants, the Board, and all other interested persons with the opportunity to consider whether any modifications should be made to the planning process. In other words, the MOU planning process includes a mechanism for addressing the possibility that the process might not fully achieve our goal for this investigation: to ensure that non-transmission alternatives are given full, fair and timely consideration in planning for Vermont's bulk transmission system. In addition, the increased public participation

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11. While CLF filed with its direct brief a proposed, modified version of the MOU, that proposal was not submitted or reviewed in the evidentiary hearings. For this reason, as further discussed below, we conclude that CLF's proposed modified MOU is not supported by the evidentiary record.

12. We will, therefore, maintain the current proceeding as an open docket. Any possible modifications to the transmission-planning process identified in the 2009 evaluation process and in comments in response to the evaluation will be considered within this docket. We will also provide interested persons who are not parties with an opportunity to intervene at that time, if they so wish.

that the MOU provides is another vehicle for raising possible improvements to the transmission-planning process.

We now turn to a more detailed consideration of CLF's arguments in opposition to the MOU.

#### CLF's Objections to the MOU's Planning Process

CLF recommends that the Board either (1) identify specific changes to the MOU and allow the signatories to the MOU an opportunity to accept such changes, or (2) issue an order setting forth a process for transmission planning that provides for developing and implementing integrated resource plans for all transmission projects.

CLF submitted a proposed red-line strikeout version of the MOU with its brief on February 1, 2007. CLF states that the modified version of the MOU is "offered as a means for the Board to consider how the structure contemplated in the MOU could be altered to address many of the shortcomings identified by CLF."<sup>13</sup>

The Department opposes the changes contained in the modified version of the MOU and sets forth two reasons why the Board should reject the changes. First, the Department states that the MOU "is a bottom-line settlement which each party has the right to terminate 'in the event that the Board fails to approve this Memorandum of Understanding without substantive modification or condition, or acts to overrule or disapprove any portion' of the MOU."<sup>14</sup> Second, the Department contends that CLF does not explain the reasons for the changes to the MOU in its brief or the testimony of its witness. Also, the Settling Utility Parties note that CLF's modified MOU has not been offered into evidence.

The arguments put forth in CLF's brief largely address CLF's proposed changes in its modified MOU, and the proposed modified MOU serves to provide detail to its general recommendations. However, CLF's proposed modified MOU has not been offered into evidence, nor is there evidence in the record addressing the specific changes that CLF proposes in its modified MOU. Because of this lack of evidentiary support, we could not adopt CLF's proposed

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13. CLF Brief at 3.

14. Department Attachment A to Brief, citing exh. MOU-1 at ¶ 108.

modified MOU. Thus, we will not address the specific, individual changes set forth in the modified MOU. Instead, we address, in turn, each of the four general arguments presented in CLF's brief.

1. Overly Cumbersome and Bureaucratic Process that Fractures Decision-Making and Responsibility

CLF contends that the VSPC envisioned by the MOU would be dominated by "traditional utility viewpoints and perspectives."<sup>15</sup> CLF further contends that the VSPC "has a complex voting and meeting structure and limited authority to do anything" and "serves mostly as a dispute resolution mechanism."<sup>16</sup> CLF claims that the proponents of the MOU have failed to explain how the VSPC would provide a better transmission planning process.

CLF asserts that, in place of the VSPC proposed by the MOU, a separate and independent structure should be created that has specific responsibility for examining alternatives to transmission projects. CLF states that "at a minimum a smaller VSPC entity with fewer members, public funding for the participants and increased authority for the VSPC activities are needed."<sup>17</sup> To support its proposal for a new independent entity, CLF cites the creation of the EEU as an instance where the management and implementation of energy efficiency was centralized because of the failure of the electric utilities to effectively coordinate and implement meaningful energy efficiency programs.

CLF contends that the existing structure, in which individual distribution utilities are responsible for evaluating and implementing Non-transmission alternatives, would lead to fractured and inconsistent planning: "The individual ability of Vermont [distribution utilities] to address [non-transmission alternative] options varies widely. Each [distribution utility] will have a different experience with [non-transmission alternatives] and a different learning curve for understanding and evaluating options."<sup>18</sup>

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15. Peterson pf. at 7; Peterson reb. pf. at 5.

16. Peterson pf. at 8; Peterson reb. pf. at 5.

17. CLF Brief at 9.

18. CLF Brief at 12.

The Department criticizes CLF's proposal on the grounds that it does not specify how utilities, with their obligations to serve, would interact with the newly envisioned VSPC and does not delineate the responsibilities of the VSPC and the utilities. The Department asserts that excluding utilities from the VSPC could result in a less transparent review of non-transmission alternatives because the utilities not involved in the VSPC would move their involvement outside the process envisioned by the MOU. The Department contends that the MOU creates opportunities for electric utilities and other VSPC participants to build common knowledge related to addressing reliability deficiencies.

The Department additionally contends that CLF has not provided clarity as to whether the VSPC would merely make recommendations or would have the authority to make decisions. Finally, the Department contests CLF's assertion that the MOU creates a costly level of bureaucracy and contends that CLF's proposed creation of a new entity to oversee non-transmission alternative planning would create redundancy by duplicating the efforts of electric utilities.

The Settling Utility Parties contend that, given the number of utilities and their responsibility for providing adequate service, the MOU planning process is efficient and reasonable. The Settling Utility Parties oppose CLF's contention that a third-party entity should perform non-transmission alternative analyses. The Settling Utility Parties contend that this would create an inefficient process because the utilities are the ones with the expertise and data to scope and assess non-transmission alternatives. Further, the Settling Utility Parties state that, since the utilities are the entities responsible, pursuant to statute, for ensuring adequate service, the affected utility must ensure that any non-transmission alternative analysis performed by a third-party is reasonable. The Settling Utility Parties conclude that a third-party analysis would simply lead to inefficiencies and add costs.

The VSPC envisioned by the MOU would have 23 voting members, and the large portion of these voting members would be representatives of the electric utilities. However, the purpose of this group is to evaluate options for ensuring reliable service. The utilities are responsible for

providing reasonably adequate service.<sup>19</sup> The electric utilities have the knowledge and expertise to properly evaluate impacts to the electric system, and furthermore, have the responsibility to do so within their systems.

Therefore, we conclude that the VSPC brings necessary stakeholders together in an appropriate manner in the transmission-planning process. CLF has not demonstrated how a separate, independent entity could effectively function without creating redundancy and needless expense. For these reasons, we conclude that the MOU does not create an overly cumbersome and bureaucratic process and does not fracture decision-making and responsibility.

## 2. Limited Public Involvement

CLF contends that the MOU does not provide for meaningful public input in the process. CLF claims that the MOU should be altered to allow public input to have more effect and be able to alter the outcome of a decision by the VSPC. CLF argues that the MOU simply provides for a mechanism for informing the public of what is happening, but does not "actively engage the public or allow the public to have a say in decisions that are being made."<sup>20</sup> Further, CLF states that the structure of the VSPC, by having only three public members, ensures that the public members can always be out-voted by utilities. Finally, CLF asserts that the MOU inappropriately does not provide funding for public members to participate in the VSPC or access to independent expertise to assist the public members.

In response, the Settling Utility Parties assert that the MOU increases transparency and dissemination of information to the public, thereby allowing members of the public to access relevant information. The Settling Utility Parties additionally reiterate the VSPC's provision for voting public members.

The Department contends that CLF has not provided a clear alternative to the MOU's public engagement process. The Department further claims that the MOU's public engagement process is a significant improvement over existing mechanisms.

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19. 30 V.S.A. § 219.

20. CLF Brief at 9-10.

We conclude that the MOU significantly enhances the ability of the public to provide input into the selection of options to ensure adequate reliability of the electric system. As the Department notes in its brief, currently the public is solicited for comments on this issue only during the development of the electric distribution utilities' integrated resource plans or during public hearings in the Section 248 process, after the utilities have already selected a preferred option. The MOU provides for a planning process that is substantially more open, both in the greater dissemination of information to the public and in enhanced opportunity for the public to provide input during the planning process. Furthermore, the MOU provides that the VSPC is to have three public members, appointed by the Board, to represent residential, commercial and industrial, and environmental interests, thus providing a formal mechanism that assures the opportunity for various public perspectives to be heard. Although the three public members will constitute a minority of the voting VSPC members, if they disagree with a particular VSPC action they will have the ability to make public their concerns if they so wish (for example, through the issuance of a minority report).

While CLF contends that the public members of the VSPC do not have access to independent expertise, the Department, the entity required by statute to represent "the people of the state,"<sup>21</sup> may retain experts to assist in their evaluation of options.<sup>22</sup> This provides an opportunity for some measure of independent analysis.

We address the issue of providing public members with a per diem in a separate section of this Order.

One concern that was not raised by CLF regarding the public members' participation in the VSPC is the fact that the utilities are specifically allowed to appoint alternates to the VSPC, while this ability is not specifically provided for the public members. We conclude that allowing for the appointment of alternate public members will facilitate public input in the planning process by increasing the likelihood that representatives of residential, commercial and industrial, and environmental interests will be present at VSPC functions. Further, we determine that allowing the Board to appoint alternate public members is not a substantive change to the MOU.

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21. See 30 V.S.A. § 2(b).

22. MOU at 32, ¶ 74.

If any party believes that this requirement would constitute a substantive modification, it may address this issue in a motion to reconsider.

For the reasons stated above, we conclude that the MOU provides sufficient public input into the planning process.

### 3. Weakened Standards for Evaluating Projects

CLF contends that the MOU departs from the use of the societal test by allowing for the consideration of other factors such as rate and bill impacts and the ability to implement alternatives. CLF states that the use of other tests to evaluate alternatives to address reliability issues could result in the selection of an alternative that is not truly least-cost, with a resulting burden on ratepayers.

The Settling Parties contend that the Board has previously given consideration to other factors in applying the societal test, including implementation hurdles faced in deploying non-transmission options.

We conclude that the MOU does not fundamentally alter the societal test. Rather, it provides that solutions to reliability problems are to be evaluated against real-world issues that the Board must consider, including implementation and impacts on ratepayers. However, it is important that participants in the VSPC do not inappropriately exaggerate these factors to bias the selection process towards particular outcomes. We expect VSPC participants to keep this concern in mind when they evaluate alternatives.

### 4. Failure to Treat Non-Transmission Alternatives as Equivalent to Transmission for Funding

CLF contends that the MOU does not adequately address the disparity between funding options for transmission and non-transmission alternatives. Currently, certain transmission options intended to address reliability can receive regional cost-sharing, while non-transmission alternatives are not eligible for such cost-sharing treatment. CLF contends that this situation could result in the selection of alternatives that are not truly least-cost.

In response, the Department asserts that the MOU "addresses the reality that Vermont faces today and recognizes the possibility that equivalent funding may be provided in the

future."<sup>23</sup> The Department further contends that the issue of equitable regional cost treatment for non-transmission alternatives is an issue beyond the scope of the Board's jurisdiction.

As all parties have noted, the Board, Department, and Vermont's electric utilities are obligated by statute to advocate for equal treatment of non-transmission alternatives to address reliability problems.<sup>24</sup> This advocacy cannot, however, be read to require inclusion of an unenforceable provision in this MOU. While the Board would like to see equal regional cost treatment for transmission and non-transmission alternatives, we do not have the authority to alter ISO-NE's inequitable consideration of all solutions to reliability issues.<sup>25</sup> Consequently, we find that the MOU effectively addresses the issue of cost treatment, by making clear that the same standards for cost allocation apply to non-transmission alternatives and transmission alternatives, to the extent possible under the applicable regulatory framework.

#### Compensation for VSPC Public Members

Because transmission planning is not directly related to the full-time professional responsibilities of the VSPC public members, we are persuaded that it is appropriate to provide these members with some type of compensation for their service. We adopt the Department's recommendation in its February 2, 2007, letter,<sup>26</sup> that per diem and travel reimbursement be provided to the public members consistent with that provided to members of state boards pursuant to 32 V.S.A. § 1010(b),<sup>27</sup> with the mileage rate to be the same as that provided to state personnel. We also accept the Department's recommendation that the costs of providing the per diem and travel reimbursement to the public members should be allocated equitably among the

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23. Department Reply Brief at 11.

24. Public Act 61, § 8 (2005 Vt. Bien. Sess.).

25. We note, however, that ISO-NE now allows demand-side resources to compete on a comparable basis with supply-side resources in the Forward Capacity Market, a result for which this Board had vigorously advocated before the ISO.

26. The Department's letter, which was filed in response to questions raised at the technical hearing on the MOU, states that AIV, CVPS, BED, GMP, VELCO, VEC, and WEC concur with the letter.

27. 32 V.S.A. § 1010(b) allows for per diem reimbursement of up to \$50 per day for attendance at regular or special meetings of the state board or any committee thereof, and for "performance of other duties directly related to the efficient conduct of necessary board business as assigned and approved by the chairperson, provided that payment for such duties shall be at the per diem rate prorated for actual time spent performing duties."

distribution utilities. However, we do not have sufficient evidence before us at this time to establish the precise mechanism for allocating the costs of providing this compensation. Therefore, we condition our approval of the MOU on the Settling Parties' acceptance of the provision of per diem and travel reimbursement to the VSPC public members as described above,<sup>28</sup> and we instruct the Settling Parties to this proceeding to file their proposals for allocating the costs of such compensation on or before July 31, 2007. We encourage parties to file joint proposals, if possible. Comments on any proposals should be filed on or before August 15, 2007.

#### Applicability of MOU to Non-Signatory Distribution Utilities

The Board opened this proceeding as a contested case to investigate "the obligations of [VELCO] and Vermont's distribution utilities with respect to least-cost integrated resource planning for VELCO's transmission system," and ordered VELCO and all Vermont distribution utilities to participate in this proceeding.<sup>29</sup> In this contested-case proceeding, all parties, including the non-signatory distribution utilities, were provided an opportunity to present evidence, cross-examine other parties' witnesses, and present legal argument.

While most of the Vermont distribution utilities have signed the MOU, three have not: Hyde Park, Johnson, and Stowe. By entering the MOU, the signatory distribution utilities have agreed to undertake the various obligations that the MOU assigns to them. Because the MOU planning process is one that encompasses the transmission system serving the entire state, the effectiveness of the process will be diminished if all Vermont distribution utilities do not participate.

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28. We note that the DPS's February 2, 2007, filing, states that many of the MOU signatories concur with the DPS's position. The other MOU signatories have not indicated whether they would support or oppose such a condition.

29. Order Opening Investigation, 7/20/05 at 4, 5.

For these reasons, pursuant to our authority under Sections 203, 209 and 218c of Title 30,<sup>30</sup> we conclude, and will require, that the non-signatory distribution utilities must comply with the obligations that the MOU assigns to distribution utilities.

There is one exception to this conclusion and requirement. Under the MOU, VELCO and the signatory distribution utilities agree that, with respect to the Department's participation in the VSPC:

in the event the Department finds it necessary to retain personnel or entities outside the Department to assist it with respect to matters arising under this paragraph, the expenditures for such personnel or entities shall be eligible for allocation to the Vermont Utilities in accordance with the procedures set forth in 30 V.S.A. § 21, subject to the right of a Vermont Utility to petition the Board concerning the reasonableness, necessity and allocation of such expenditures. General costs of DPS participation in the VSPC shall be billed to all Vermont Utilities proportionally. To the extent identifiable, costs associated with DPS participation through the VSPC in specific project development efforts shall be allocated only to the Affected Utilities.<sup>31</sup>

Paragraphs 21, 46, and 104 of the MOU contain similar provisions by which the Department may allocate certain identified costs to the Vermont Utilities.

We do not find any clear authority for this Board to require non-signatory distribution utilities to reimburse the Department for such costs pursuant to Paragraphs 21, 46, 74, and 104 of the MOU. However, we recognize that, because the obligations and benefits of the transmission-planning process are shared among all utilities, signatory and non-signatory alike, it follows that the non-signatories must rightly share in the associated costs. Furthermore, to allow some of the utilities to avoid their fair share of these costs could create disincentives in the future for utilities to enter into beneficial agreements such as this MOU.

Even though we may not have the authority to require the non-signatory utilities to comply with the cost-allocation provisions of the MOU, the non-signatories are still subject to the statutory provisions of 30 V.S.A. § 21. We are maintaining the current proceeding as an open docket at least through the 2009 evaluation of possible modifications to the transmission-

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30. In our Order opening this proceeding, we specifically cited these statutory provisions as a basis for our authority to undertake this investigation. *Id.* at 4.

31. Exh. MOU-1 at ¶ 74.

planning process. While this remains an open proceeding, the Department may if it wishes allocate its eligible costs to Vermont electric utilities, consistent with the provisions of 30 V.S.A. § 21.

#### Future Modifications to MOU

The MOU is a complex document that describes in detail a new transmission planning process, and addresses numerous other related issues. The Board recognizes that the MOU signatories have made compromises to reach this agreement, and that they believe the transmission planning process set forth in the MOU will operate as they intended. However, based on our experiences with other memoranda of understanding that created other new and comprehensive programs and processes, we anticipate that, sometime after the MOU is in effect, there will be a need (or a desire) to modify some of its terms either to address an unintended consequence or to further improve the process. In fact, such modification might result from the evaluation of the planning process that the MOU requires in 2009.

We are concerned that the plain language of the MOU would require us to open a docket to consider any proposed changes, regardless of whether a particular change is opposed by any party. In such an instance, the costs associated with implementing the change would be higher than they otherwise would be, absent the MOU's requirement.

Based on evidence presented at the technical hearing, the Settling Parties' true concern is that they be provided with notice and an opportunity for hearing to enable them to oppose a change if they so choose, not that the Board be required to open a docket to consider even uncontested changes. This concern is echoed in the Department's February 2, 2007, letter, in which the Department states that it would support allowing the Board to make changes to the MOU upon reasonable notice to the parties and opportunity to request a hearing, provided that any such request for hearing is treated pursuant to the "contested case" provisions of the Vermont Administrative Procedure Act. The Department also states that the Board's rulemaking authority would be an exception to the previous statement — to the extent that the Board's rulemaking authority extends to matters addressed in the MOU, the MOU does not restrict the exercise of that authority.

We are persuaded that the formulation proposed by the Department, and agreed to by several Settling Parties, is a reasonable one. It addresses the legitimate concerns of the MOU signatories — that they be given notice and an opportunity to request a hearing before any changes to the MOU are made — while also addressing our concern that the MOU not require the Board to conduct unnecessary judicial processes to address uncontested proposed changes. In addition, it clarifies that the MOU does not impair the Board's rulemaking authority in any way. Therefore, we are conditioning our acceptance of the MOU on the Settling Parties' acceptance of this determination regarding the processes to be used to modify the MOU in the future.

#### Role of EEU in VSPC

Paragraph 73 of the MOU provides that the EEU shall designate a representative to the VSPC to be a non-voting participant. We determine that, as long as the EEU is a contractor to the Board, it is appropriate for it to be a non-voting participant in the VSPC.

We note, however, that Vermont policymakers have recently discussed whether this model should be changed such that the EEU would become an independent entity, no longer under contract to the Board. If such change were to occur, we hereby put the parties to this proceeding on notice that it may be appropriate to revisit some aspects of the role of the EEU in the transmission-planning process set forth in the MOU. In particular, it may be appropriate to consider whether the EEU should remain a non-voting participant in the VSPC, or whether it should be given voting status, and if so, what effect that might have on the VSPC's voting structure. Accordingly, if the Board considers whether to change the EEU model, we will notify the parties to this proceeding so they may participate in those discussions.

### **VII. CONCLUSION**

For the reasons set forth above, we approve the MOU with the modifications and conditions set forth in the Order, below.

### VIII. ORDER

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

1. The Memorandum of Understanding ("MOU") between the Vermont Department of Public Service and the Settling Parties filed on September 6, 2006, is hereby approved with the modifications set forth in this paragraph, but only if the Signatories agree to those modifications. Within thirty days of the date of this Order, each Signatory to the MOU shall file a statement indicating whether it agrees to the modifications. Those modifications to the MOU are:

a. The Vermont System Planning Committee ("VSPC") shall provide a per diem and travel reimbursement to the VSPC public members consistent with that provided to members of state boards, with the mileage rate to be the same as that provided to state personnel.

b. The Board may make changes to the MOU upon reasonable notice to the parties and opportunity to request a hearing, with any such request for hearing to be treated pursuant to the "contested case" provisions of the Vermont Administrative Procedure Act. The foregoing shall not apply to the Board's exercise of its rulemaking authority; thus, to the extent that the Board's rulemaking authority extends to matters addressed in the MOU, the MOU shall not restrict the Board's exercise of its rulemaking authority.

2. The Vermont System Planning Committee called for under paragraph 69 of the MOU is established. The initial meeting of the VSPC shall be held within 120 days of the date of this Order.

3. Within nine months of the date of this Order, the VSPC shall submit its rules of procedure as an information filing to the Board. The VSPC shall provide to each VSPC participant and all Parties to this Docket notice and a copy of the rules at the time they are filed with the Board.

4. For each of the three public representatives that the Board is to appoint to the VSPC to represent residential, commercial and industrial, and environmental interests, the Board may designate one alternate who may act fully in the absence of the appointed representative.

5. The Settling Parties to this proceeding shall file their proposals for allocating the costs of per diem and travel reimbursement to the VSPC public members on or before July 31, 2007. We encourage parties to file joint proposals, if possible. Comments on any proposals shall be filed on or before August 15, 2007.

6. The modifications to the Docket 5980 Memorandum of Understanding contemplated under the MOU are hereby approved.

7. The modifications to the Docket 6290 Memorandum of Understanding contemplated under the MOU are hereby approved.

8. The Board shall issue orders closing all Area Specific Collaborative dockets except Docket Nos. 6805 and 6806, as called for under the MOU.

9. The Board shall retain ongoing jurisdiction to resolve disputes arising under the MOU.

10. All Vermont electric distribution utilities that have not signed the MOU must comply with the obligations that the MOU assigns to distribution utilities, except for the provisions set forth in Paragraphs 21, 46, 74, and 104 of the MOU regarding allocation of costs by the Department of Public Service ("Department"). The foregoing does not limit the ability of the Department to allocate its costs pursuant to 30 V.S.A. § 21.

11. The current proceeding shall remain an open docket. Any possible modifications to the transmission-planning process identified in the 2009 evaluation process and in comments submitted in response to the evaluation will be considered within this docket. The Board will determine whether this docket should continue to remain open after it completes its consideration of those possible modifications.

Dated at Montpelier, Vermont, this 20<sup>th</sup> day of June, 2007.

s/James Volz )

) PUBLIC SERVICE

s/David C. Coen )

) BOARD

s/John D. Burke )

) OF VERMONT

OFFICE OF THE CLERK

FILED: June 20, 2007

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 in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@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.*

**Appendix A – List of Issues** (from Order of October 7, 2005)

1. What is the scope of VELCO's current transmission planning, and should it be modified?
2. Should VELCO be required to develop a least-cost integrated resource plan for bulk transmission needs? If so, who should be responsible for identifying, implementing, and funding the least-cost solution for meeting those needs?
3. Are additional planning tools needed to achieve the goal of meeting resource needs at the lowest societal cost?
4. Should regulatory or market mechanisms or standards be modified to promote the identification, development, and implementation of least-cost solutions?
5. What should the public's involvement be in the planning process for Vermont's bulk transmission system?
6. How can the interests of ratepayers be sufficiently protected in the development and implementation of a least-cost integrated resource plan for bulk transmission needs?
7. Should a rate-impact assessment, a financial-impact assessment, and an integrated financial plan be included in least-cost transmission planning? If so, should the impact assessments and overall financial plan reflect the financial impacts on Vermont ratepayers, Vermont utilities, and the Vermont economy of implementing and funding various transmission and non-transmission alternatives?
8. How should Vermont distribution utilities coordinate with VELCO and with each other in (i) developing and implementing least-cost solutions for meeting bulk transmission needs, and (ii) undertaking other planning activities, including the distribution utilities' least-cost integrated resource planning, distributed utility planning, and issuance of Act 250 "ability to serve" letters?
9. How, and to what extent, should VELCO and the distribution utilities coordinate with other providers of services, including the Energy Efficiency Utility and market providers, to promote delivery of least-cost solutions to bulk transmission needs? What standards of performance should apply to any entity that proposes to implement a market-based solution?
10. How, and to what extent, should VELCO and the distribution utilities coordinate with the Agency of Natural Resources and other permitting agencies to develop least-cost solutions to bulk transmission needs?
11. What barriers exist to the planning and implementation of least-cost solutions for bulk transmission needs? How can those barriers be overcome?

12. How should planning in Vermont for bulk transmission needs be integrated with (I) the NE-ISO's regional market and planning responsibilities and (ii) federal regulatory requirements (principally, FERC regulation and homeland security requirements)?
13. How should VELCO and the Vermont distribution utilities be developing their forecasts of need for purposes of determining the adequacy of bulk transmission facilities?
14. What should be the roles of the Public Service Board and the Department of Public Service in the development and implementation of a least-cost integrated resource plan for bulk transmission needs?
15. Should any new entities be created, or existing entities modified or relied upon, for the development and implementation of a least-cost integrated resource plan for bulk transmission needs?
16. How should we ensure that non-transmission alternatives are given timely consideration in the identification of least-cost solutions? Conversely, at what point should consideration of non-transmission alternatives stop, and traditional, transmission solutions be implemented?
17. To what extent should planning for Vermont's bulk transmission system needs be integrated with planning efforts for the replacement of existing, significant power supply resources that are scheduled to expire over the next decade?
18. Does the Board need to revisit its decisions in Dockets 5980 and 6290?
19. What measures, if any, should be put in place to improve the accuracy of cost estimates for transmission and non-transmission alternatives?
20. How should the plan for Vermont's bulk transmission system be updated? In particular, what should be the scope of updates, the interval between updates, and the regulatory process for review of updates?