STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6107

Tariff filing of Green Mountain Power Corporation requesting a 12.9% rate increase, to take effect June 22, 1998	))))	Schedule of Hearings *See Appendix A* Appearances *See Appendix B*

Order entered: 1/23/01

Michael H. Dworkin, Chairman
David C. Coen, Board Member

OPINION AND ORDER

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I. INTRODUCTION

In today's Order, we approve a rate increase for Green Mountain Power Corporation ("GMP" or the "Company") of 3.42 percent ($6.1 million above the existing temporary rates), effective for bills rendered on or after January 23, 2001.[1] This rate increase is based upon a settlement agreement between GMP and the Department of Public Service ("Department" or "DPS") — the Third Memorandum of Understanding (the "Third MOU") — in which these parties request us to approve the stipulated rate levels because — they contend — the resulting rates would be "just and reasonable" in light of GMP's present financial difficulties and the public benefits to ratepayers set out in the Third MOU.[2]

The evidence confirms that GMP currently is in considerable financial distress, for reasons that we discuss below. The Company's access to capital has been limited. Absent rate relief, this access could be further limited at a time when GMP must obtain additional capital to pay operating expenses, to refinance long-term debt, and to finance new facilities to serve rapidly expanding growth in key sectors of its service territory.

Rates based upon traditional cost-of-service methodologies would fall short of alleviating this financial distress and would expose GMP to bankruptcy. After careful consideration, we conclude that the prospects for deriving significant benefits for GMP's ratepayers through bankruptcy are either relatively small or very uncertain. At the same time, bankruptcy entails a high likelihood of substantial costs that would ultimately be borne by ratepayers, and significant risks that could adversely affect not only GMP and its customers, but also most other Vermont electric ratepayers. Thus, we find that bankruptcy is not desirable.

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1. This rate increase reflects a 12.42 percent increase over the rates established almost three years ago. *See*, *Tariff Filing of Green Mountain Power Corporation,* Docket 5983 Orders of February 27 and June 8, 1998. As part of today's decision, we adopt the temporary rates previously authorized under 30 V.S.A. § 226 as the permanent rates for the time periods in which they were effective and as part of the final rates we adopt today. Specifically, this Board approved a temporary rate increase of 5.7 percent ($9.19 million), effective December 15, 1998, and an additional temporary rate increase of 3 percent ($4.5 million), applied to the firm rates and temporary rates on December 17, 1999. Orders of 12/11/98 and 12/17/99.

2. Four parties to this proceeding — International Business Machines Corporation ("IBM"), the American Association of Retired Persons ("AARP"), the Vermont Ski Areas Association ("VSAA"), and the Vermont Electricity Consumers Coalition ("VECC") — opposed approval of the Third MOU, arguing that the resulting rates would not be just and reasonable. The remaining two parties, the Vermont Public Interest Research Group and Vermont Yankee Nuclear Power Corporation, took no position on the Third MOU.

The Board's obligation under Vermont law is to establish just and reasonable rates. As this Board has previously ruled, traditional rate-making methodologies may sometimes need to yield to other considerations (such as the need to attract capital) so long as the final result remains fair to ratepayers. Thus, these methodologies:

> need not be stringently applied if a greater recovery is "necessary to ensure efficiency and progress in the art and the continued attraction of capital to the enterprise." *Washington Gas Light Co. vs. Baker*, 188 F.2d 11, 19 (1950). Even that exception is limited by the overriding rule that it must not result in unfairness to ratepayers. *Id.*[3]

Applying these principles, we find it necessary to depart from traditional ratemaking methodologies and to establish rates that, for the good of Vermont ratepayers, will enable GMP to improve its financial viability and to have access to capital markets. In essence, our decision rests upon our judgment that, in light of the record evidence concerning GMP's current financial difficulties, the higher rates in the Third MOU are just and reasonable and not unfair to ratepayers. Expressing the same concept in a more fundamental sense, we do this because we conclude that, for the sake of ratepayers, the financial viability of the Company is so important that we should approve the Third MOU, despite the fact that poor decisions by GMP's prior management are a major cause of the Company's present financial difficulties.

Therefore, we accept the settlement between the Department and GMP, with one technical exception[4] and two important supplemental safeguards. The first of these supplements restricts GMP's future investments in unregulated subsidiaries. The second ensures that ratepayers will share the benefit of any premium above book value that GMP derives from sales

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3. *See Tariff Filing of Central Vermont Public Service Corporation*, Docket 5132, Order of 5/15/87 at 132, fn. 43. This Board went on to observe that:

> A recent state application of this exception is evident in *Re: Maine Pub. Service Co.*, 69 PUR 4th 564 (Me. P.U.C. 1985). That order based allowed rates on the calamitous financial condition of the utility, rather than on the appropriate cost of service.

4. The technical exception relates to a provision of the Third MOU in which the Department and GMP agreed that GMP should recover all of its costs associated with the power purchase contract between the Vermont Joint Owners and Hydro-Québec (the "HQ-VJO Contract"). (The Vermont Joint Owners ("VJO") of the Highgate interconnection facility are eight parties, including GMP. GMP and the Department request a finding that the Contract is "used-and-useful." As we explain more fully below, we accept the basic results embodied in the Third MOU and will treat the HQ-VJO Contract *as if* it were used-and-useful, but do not alter this Board's previous decision that much of the power purchased under the contract is not economically "useful," under long-standing principles.

of some or all of its assets or from a future merger, thus protecting against unjust enrichment and ensuring a fair allocation of the benefits of today's Order.

Roots of GMP's Current Financial Difficulties

The Third MOU represents a request that the Board fashion rate relief that its signatories describe as fair to GMP and its ratepayers. Because this request essentially asks the board to make an equitable judgment, the roots of GMP's financial difficulties are material both to what rates are "just and reasonable" and to what terms and conditions we must establish in conjunction with those rates.[5]

GMP's witnesses consistently asserted that the Company's present financial hardships are the result of this Board's 1998 decision to prevent GMP from recovering all of its costs associated with the purchase of power from Hydro-Québec.[6] The evidentiary record makes clear that this assertion is too simplistic. GMP correctly points out that the disallowance in that Docket did affect GMP's financial situation. However, other factors clearly played a major and critical role. Among those factors, three of the most significant were:

- the earnings pressure caused by high Hydro-Québec costs (these cost pressures originated prior to GMP's 1998 rate filing and include additional costs arising from GMP's sell-back arrangements which, while designed to mitigate the power costs, have led to much higher present costs);
- GMP's pre-1998 payment of an unusually high level of dividends (in light of the Company's earnings); and
- the very large losses caused by GMP's decision to expand its operations beyond traditional utility services and into more risky unregulated lines of business.

For many years, GMP's situation was similar to, or more favorable than, that of other small investor-owned utilities across America. GMP, although it is the second largest electric utility in Vermont (serving about a third of Vermont's customers), is still relatively small by comparison to utilities outside of the state. Yet GMP demonstrated a continuing ability to earn a

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5. *See* 30 V.S.A. § 9. "The Board shall have the powers of a court of record in the determination of all matters over which it is given jurisdiction. . . . ." The powers of a "court of record" include both those of law and those of equity. *See* Docket 5270-CV-1, Order of 3/19/91 at 13, citing 1971 No. 185 (Adj. Session) § 236(d).

6. Docket 5983, Order of 2/27/98.

favorable return for its investors. Indeed, from the early 1980's through the mid-1990's, GMP consistently achieved an actual return above the electric utility average return.[7]

Beginning in the late 1980's, GMP's management and Directors made a fundamental decision to expand beyond the Company's traditional role of providing regulated utility service, establishing unregulated subsidiaries to provide other services. In some cases, these ventures entered lines of business unrelated to GMP's core utility operations, such as innovative wastewater treatment technologies and the operation of a propane gas company. In terms of "intellectual capital," the most significant of these new investments was the creation of Green Mountain Energy Resources ("GMER"), a subsidiary intended to offer energy services in newly competitive electricity supply markets.[8] GMP's efforts to diversify into the various unregulated subsidiaries, and particularly GMER, required GMP to divert an increasing share of its resources away from the provision of basic retail electrical service to its new operations. These resources included the attention of management, the transfer of expertise,[9] and capital. Although the unregulated operations remained small relative to the size of the overall corporation, as the number and scope of the investments became more significant, the unregulated subsidiaries still required GMP to transfer increasing sums of money. Ultimately, GMP invested more than $43 million in these three unregulated ventures.[10]

In the early stages of GMP's diversification into unregulated operations (late 1980's through mid-1990's), the Company's stock price moved in a manner consistent with utility averages. GMP also continued to pay dividends and, in fact, increased the dividend a number of times. As the Department pointed out in 1992, the increasing dividend led to an undesirably high

7. *See* Finding 18.

8. Technically, GMER was a subsidiary of Green Mountain Resources, Inc., which was itself a subsidiary of GMP.

9. Prior to the hearings in GMP's last rate case, a significant percentage of GMP's most experienced staff, including the President and Chief Executive Officer and the General Counsel, transferred from the regulated business to the unregulated affiliate, GMER, in 1997. *See* Finding 24, below.

10. To put this in perspective, over the same time period, GMP invested $144.6 million in electric plant. Clearly, unregulated investments were neither small nor immaterial to the Company overall. *See* Finding 27, below.

dividend payout ratio.[11] Notwithstanding the lower growth in retained earnings arising from the high payout ratio, GMP simultaneously invested significant capital in new, unregulated ventures. GMP continued to obtain consistently high returns on investments in core utility operations throughout this period. In contrast, however, the unregulated subsidiaries generated either no return or substantially lower ones in most years.[12] Whereas GMP invested approximately $43 million in the three unregulated ventures, to date, the Company has recovered only $21 million from the sale of unregulated assets, while already recording $13 million in losses and write-offs. GMP still has $8.2 million invested in unregulated assets that the Company is attempting to sell; there is no firm schedule for the sale or certainty that GMP will recover this remaining investment.

The impact of the high payout ratio and expanding investment in unregulated operations hit GMP during 1997. Losses in unregulated operations became more significant. And, in September of that year, GMP reduced its dividend by one-half. According to the Company at that time, the key reasons for reduced earnings and the dividend reduction were three months of warm weather and the costs of developing its unregulated venture, GMER.

GMP's stock price plummeted immediately after this announcement, dropping 23 percent within two days and approximately 30 percent over the remainder of the year, at a time that utility stock prices in general (as measured by the Dow Jones Utility Average) were increasing by approximately 20 percent.[13] This rapid and strong reaction suggests that the investment community did not regard the diversion of earnings into the unregulated ventures and the prospect of future earnings from those investments as an attractive trade-off. It was the first and still most significant deviation from the national average for utility stocks.

The dividend reduction and ensuing reaction of financial markets placed immediate strain on GMP. This soon blended with the effects of this Board's decision in Docket 5983. Three

11. Both GMP and the Department raised concerns over the high dividend payout ratio in the early 1990's. GMP sought to "correct" the ratio through a rate increase that would provide GMP additional earnings, thereby enabling the Company to lower its payout ratio. This Board, in a 1992 decision, made clear that while stable payout ratios and increasing dividends were both desirable, GMP's management had a continuing responsibility to balance these considerations in setting its dividend. *Tariff Filing of Green Mountain Power*, Docket 5532, Order of 4/2/92 at 88.

12. *See* Appendix E.1.

13. *See* Appendix E.2.

months prior to the dividend reduction, GMP had filed a request with this Board seeking an increase in rates of 14.38 percent.[14] The Company maintained that the rate increase was needed in large part due to increased costs associated with GMP's purchase of power from Hydro-Québec and to permit GMP to continue to earn a reasonable return.

In that proceeding, this Board, at the Department's request, considered (for the first time) the question of whether GMP's early lock-in to the HQ-VJO Contract (under which GMP obtains approximately one-third of its power) was prudent and whether the contract was used-and-useful under traditional rate-making principles. The Department sought the exclusion of approximately $2.8 million of costs associated with the HQ-VJO Contract. IBM requested an even larger disallowance, recommending the exclusion of approximately $8.6 million.[15] After hearing extensive evidence, this Board found that GMP acted imprudently when it voluntarily locked in early to the Contract in August of 1991, thereby giving up its right — *and obligation* — to review wholesale power costs through November 30, 1991, before determining whether to cancel the Contract. In addition, this Board found that under a range of expected power cost estimates, the HQ-VJO Contract would significantly exceed projected power costs for its remaining life and was, therefore, not used-and-useful. As a result, this Board provisionally disallowed approximately $5.48 million of costs associated with the HQ-VJO Contract and allowed GMP to increase its rates by 3.61 percent.[16] GMP appealed this Order to the Vermont Supreme Court, where it remains under consideration.[17]

This Board then, as now, considered GMP's financial viability relevant to determining just and reasonable rates. In fact, the 1998 rate Order explicitly stated a willingness to reconsider its result if necessary to sustain GMP's financial viability, offering GMP the opportunity to

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14. GMP originally filed a request for an increase of 16.72 percent. During the course of the proceeding, GMP reduced the desired increase to 14.38 percent.

15. Docket 5983, Order on Reconsideration of 6/8/98 at 28.

16. In percentage terms, the $5.48 million disallowance represented less than four percent of the Company's rates. In other words, the HQ-VJO Contract disallowance was less than one-third of the total amount of costs disallowed in that case.

17. Pursuant to the Third MOU, GMP and the Department have asked the Vermont Supreme Court to stay consideration of the appeal pending a final Order by this Board in this docket.

introduce additional evidence.[18] Unlike the present case, GMP did not present evidence on its financial situation. Although the Company had originally argued that the Order "seriously jeopardizes GMP's financial health," GMP's counsel expressly stated that:

> if the methodology and measures [for calculating the HQ-VJO disallowance] are intended by this Board to be provisional and applicable in the current proceeding, we don't have a problem.[19]

And when asked about a short-term cash flow problem, GMP's representatives stated that the Company was able to borrow money and had solved the Company's cash flow problems, so that GMP was not close to bankruptcy. Driving this point home, the Company's counsel stated that GMP "does not have one foot in Bankruptcy Court."[20] GMP also specifically declined to present evidence showing short and long-term financial consequences arising from this Board's Order when this Board offered GMP this opportunity.[21] This Board issued its Order on Reconsideration in Docket 5983 on June 8, 1998.[22]

Since then, GMP has tried, but so far has failed, to mitigate the high price of power from Hydro-Québec. Indeed, power costs have risen. In 1996, GMP (without prior Board review) entered into an arrangement with Hydro-Québec (the "97-01 Agreement") which provided GMP with an immediate one-time payment of $8 million, in exchange for allowing Hydro-Québec to recall some power in subsequent years. During intermittent time periods in which market prices for power in New England were higher than the fixed prices of the HQ-VJO Contract, Hydro-Québec has exercised some of its options under the 97-01 Agreement, thus forcing GMP to replace the foregone Hydro-Québec power at even higher prices.

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18. *See* Docket 5983, Order on Reconsideration of 6/8/98 at 1 ("We have not intended in this docket to precipitate the financial insolvency, much less the bankruptcy, of the Company").

19. Docket 5983, Order on Reconsideration of 6/8/98 at 2, n.2 (quoting tr. 4/13/98 at 126). At that time, GMP's assertion as to possible financial consequences rested primarily on the Company's concern that they might need to recognize the entire HQ-VJO Contract disallowance in one year under Statement of Financial Accounting Standards ("FAS") Numbers 5 and 71. *Id*. at 21–23.

20. *Id.* at 21 (referring to tr. 4/13/98 at 45).

21. *Id.* at 22 (referring to tr. 4/13/98 at 51, 121). The evidence in the record supported the conclusion that, even with the disallowance, GMP would have a positive cash flow, continued profits on regulated operations, and continued provision of reliable service. *Id.*

22. GMP now characterizes that 1998 disallowance as the cause of the current financial distress. We find that claim to be a significant overstatement, given the other factors noted above. In addition, GMP's current claim is contrary to GMP's posture during the reconsideration phase of Docket 5983.

The Current Proceeding

GMP filed the present rate increase request on May 8, 1998, two months after this Board's original Order in Docket 5983. Based upon the evidence presented, we conclude that the rate increase embodied in the Third MOU is reasonable and we approve it.

Our acceptance of the Third MOU comes with one technical exception. Although we do not find that the Contract meets the usual definition of "used-and-useful," we do conclude that it should be treated *as if* it were used-and-useful. We cannot find, as requested by the Department and GMP, that the HQ-VJO Contract falls within longstanding definitions of used-and-useful. All parties concur that the HQ-VJO Contract remains uneconomic and thus, under this Board's prior decision in Docket 5983, is not used-and-useful. Nonetheless, the exceptions to the literal used-and-useful principle that this Board has previously recognized require consideration of the effect of our decision on the utility's financial situation, then a test of fairness to ratepayers. After doing so, we find that exclusion of HQ-VJO Contract costs on this basis would not permit the continued attraction of capital and would not be in the best interests of ratepayers.[23] Thus, we will permit recovery of the HQ-VJO Contract costs based upon these equitable considerations.

The rates we approve today will require GMP's ratepayers to pay for costs that might be disallowed under routine ratemaking methodologies. Although we consider this outcome necessary for the good of ratepayers, we also find it is necessary and appropriate to balance this result with a mechanism designed to protect ratepayers against a risk of unfair payments if our decision leads to unjust enrichment or windfall profits at the time of a potential future sale of some or all of GMP's assets or a potential merger. Therefore, in the event of an acquisition, disposal of GMP's assets, or merger at a price in excess of book value, today's Order provides that stockholders and ratepayers will share equally in any such premium, up to a maximum amount (for ratepayers) of $8 million.

The second additional condition we adopt is a prohibition against GMP's investment in new unregulated ventures during the period for which rates based on the Third MOU are in effect. As the discussion above demonstrates, GMP's capital and management expenditures on

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23. *See* footnote 3, above.

unregulated subsidiaries were both unsuccessful and large for a company of its size (i.e., over $43 million invested and at least $13 million lost for a company with net utility plant in service of $177.3 million).[24] When the losses on those ventures occurred, they placed significant financial strain upon the entire Company, through the dividend reduction and resulting stock price decrease and through limitations on access to capital. We recognize that GMP now states that it is engaged in a process of selling its significant unregulated operations. Today we conclude and require that for the period the rates we establish today are in effect, GMP should wind-down (rather than expand) its unregulated operations.

Finally, we stress that our decision today is based, in significant part, on GMP's own affirmative efforts to improve its financial situation. GMP's own recent efforts at internal and external cost reductions are critical to our decision here. Subsequent to the cost disallowance in Docket 5983, GMP has taken significant strides towards reducing its costs. GMP reduced its number of employees for its core utility operations from 320 to 195. Importantly, GMP drastically reduced the number of senior managers and eliminated half of the executive staff, a reduction rate higher than that for non-management employees. The Company also ceased the payment of bonuses to the remaining managers. In addition, the Company sold its headquarters building and consolidated several offices. GMP also entered into a beneficial power supply management contract with Morgan Stanley. Finally, GMP further dropped its dividend to shareholders to a level 75 percent lower than in 1997.[25] Collectively, these measures represent a major change in the culture of the business.

If GMP had not undertaken this fundamental restructuring of its operations and, thus, produced significant savings for ratepayers, we would not have reached the conclusions set out herein and approved the rate increase in the Third MOU. We are particularly struck by the fact that, to a large degree, the cost reduction measures have achieved much of the reductions to administrative and general costs that might have been accomplished through bankruptcy. To put this in perspective, GMP's cost savings of approximately $5 million annually are about the same

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24. *See* Findings 26 and 27, below.

25. The Department and GMP both cite two other GMP efforts to reduce its costs: the proposed sale of Vermont Yankee (Docket 6300) and the request by some utilities to revise the contracts with certain small power producers (Docket 6270). As these matters are now open dockets before this Board, we do not comment on them here.

size as the annual effect of the HQ-VJO Contract disallowance of $5.48 million in Docket 5983. Thus, absent the Company's losses on unregulated operations, the increased costs arising from the 97-01 sell-back arrangement and GMP's other financial difficulties, GMP's effective cost-cutting in response to this Board's Docket 5983 disallowance could have allowed us to continue to set the Company's rates using cost-of-service methodologies.

II. Positions of the Parties and the Public

Green Mountain Power Corporation

Green Mountain Power Corporation contends that, without rate relief in this Docket, there is a significant chance the Company will become insolvent.[26] The Company asserts that there are substantial costs and risks associated with the Company's bankruptcy, including possible damage to the financial health of other Vermont electric utilities because of the step-up provisions in the HQ-VJO Contract,[27] and that it is unclear that GMP's bankruptcy would result in any benefits to ratepayers.[28]

GMP has entered into the Third MOU with the Department which, among other things:

- finalizes the current temporary rates and increases rates 3.42 percent above the current temporary rate levels;
- permanently resolves cost disallowance issues associated with this Board's decision that GMP's early lock-in to the HQ-VJO Contract was imprudent;
- declares that the HQ-VJO Contract is used-and-useful;
- eliminates seasonal differences in rates as of April 2001;
- writes-off $3.2 million in expenses which GMP might otherwise have sought to recover from ratepayers;
- eliminates returns on certain other regulatory assets, including funds spent on the ice storm arbitration and HQ-VJO Contract negotiations;
- has a high probability of freezing GMP's rates for two years;

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26. GMP Brief at 1; GMP Proposed Findings at 2–3.

27. The HQ-VJO Contract and the Participation Agreement in which the VJOs made the power purchased from Hydro-Québec available to other Vermont electric utilities, contained provisions stating that if a participant defaulted on its obligations to purchase power, the other participants would assume that utility's power purchase on a pro-rata basis. *See* page 70 for more information.

28. GMP Brief at 18–19.

- caps the Company's earnings for 2001 and 2002;
- establishes service quality standards to assure continued high quality electric service for ratepayers;
- includes enhanced right-of-way maintenance and agreed-upon levels of capital spending for reliability; and
- assures that any proceeds gained from GMP's (and other VJO members') arbitration of the HQ-VJO Contract arising from the 1998 ice storm will be flowed through to ratepayers.

The Company asserts that this level of rates, combined with the resolution of HQ-VJO Contract-related prudence and used-and-useful disallowances, will be sufficient to put GMP on a path to recover its financial health and regain access to long-term capital markets.[29] At the same time, GMP asserts that the Third MOU provides other quantifiable and non-quantifiable benefits to ratepayers[30] that are equivalent to, and may exceed, the range of possible prudence and used-and-useful disallowances on a net present value basis.[31] GMP recognizes that adoption of the Third MOU would represent a departure from traditional cost-of-service rate-making, but contends that this Board has the authority to set rates on a basis other than a strict cost-of-service basis, if the result represents a fair balance of the interests of shareholders and of ratepayers. GMP further asserts that its proposed rate levels, in conjunction with the other provisions of the Third MOU, would result in that fair balance, and thus should be approved.[32]

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29. *Id*. at 2, 15.

30. GMP states that the sum of the Third MOU's benefits to ratepayers, when added to the potential net present value of GMP's cost-cutting initiatives over the remaining 15 years of the HQ-VJO Contract, is as much as $55.6 million. GMP Brief at 24; tr. 12/1/00 at 181–185 (Dutton).

By comparison, GMP asserts that the costs caused by its past imprudent acts are "nominal," and that it is inappropriate to require disallowances for the portions of the HQ-VJO Contract that are not economically useful. The Company contends that, if the Board were to maintain the disallowance level imposed in Docket 5983 for the remaining 15 years of the Contract, the net present value of that disallowance would be approximately $42 million. GMP Brief at 3, 24.

31. GMP Brief at 2–3.

32. *Id*. at 4–11, 26.

Department of Public Service

The Department of Public Service asserts that GMP's financial condition is precarious, and that bankruptcy is a real possibility.[33] The Department contends that a GMP bankruptcy is not in the public interest, in part because of the effects such a bankruptcy could have on GMP's ratepayers, and in part because of the effects such a bankruptcy could have on the financial health of other Vermont electric utilities.[34] The Department recommends approval of the Third MOU because the Third MOU is in the public interest and will result in enhanced consumer value and a financially viable company that will ultimately regain access to long-term capital markets.[35] The Department contends that ratepayers will benefit from GMP's specific commitments under the Third MOU, and from the enhanced ability of a financially sound GMP and other Vermont utilities to focus on the provision of high quality service to customers.[36]

International Business Machines Corporation

International Business Machines Corporation argues that this Board should continue to set rates based on traditional cost-of-service methodologies, and should disallow the imprudent portion of GMP's costs of purchasing power under the HQ-VJO Contract and the 97-01 Agreement.[37] IBM contends that this, combined with various other cost-of-service adjustments (including the cessation of dividend payments), would result in permanent rates that are 5.8 percent below GMP's current temporary levels.[38] IBM suggests that GMP should use the excess funds collected in temporary rates in 1999 and 2000 to write down existing regulatory assets rather than issue refunds to customers.[39] IBM argues that its recommendation will provide GMP with enough internal cash flow from operations to meet its year 2001 operating cash requirements, excluding refinancing, and should not result in GMP's insolvency.[40]

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33. Department Brief at 6.
34. Tr. 11/30/00 at 126–128 (Sedano).
35. Department Brief at 3.
36. *Id*. at 1–14.
37. IBM Brief at 5, 65–70.
38. *Id*. at 46, 78; Gorman sur. pf. at 3.
39. Rosenberg sur. pf. at 72.
40. IBM Brief at 79–80.

In the alternative, IBM contends that even if GMP did end up filing for bankruptcy, the benefits of a bankruptcy filing by GMP far outweigh the potential risks.[41] IBM asserts that this Board should reject the Third MOU as it is not in the public interest because (1) the rates it provides for would result in the payment of imprudent costs by ratepayers, and (2) the Third MOU's benefits to ratepayers do not outweigh its costs to ratepayers.[42] IBM also contends that if this Board were to eliminate seasonal rates (as provided for in the Third MOU), it should require GMP to implement the change so that it is revenue neutral in a calendar year (i.e., effective either on January 1, 2001, or January 1, 2002).[43]

American Association of Retired Persons

The American Association of Retired Persons asserts that this Board should adhere to traditional cost-of-service rate-making methodologies and not allow concerns about a possible GMP bankruptcy to influence its decision in this case.[44] AARP argues that such an approach would result in the disallowance of imprudent and non-used-and-useful costs associated with the HQ-VJO Contract, the 97-01 Agreement, and the Vermont Yankee nuclear power plant.[45] AARP supports the rate levels and disallowances proposed by IBM.[46] AARP contends that (1) the risks of bankruptcy, particularly the risk that other Vermont electric utilities will be affected by the step-up provisions of the HQ-VJO Contract, are significantly less than GMP has argued, and (2) ratepayers will benefit more from GMP's bankruptcy than they would if they were forced to pay imprudent and uneconomic costs.[47]

In the alternative, AARP argues that if this Board requires ratepayers to pay imprudent or uneconomic costs, this Board should condition that portion of the rate increase upon GMP's acceptance of a "recapture" mechanism that would return to ratepayers the value of rates paid in

41. *Id*. at 12.
42. *Id*. at 93–100.
43. IBM Brief at 99–100.
44. AARP Proposal for Decision at 1.
45. AARP Post-Hearing Memorandum at 1, 3.
46. *Id*. at 12.
47. AARP Proposal for Decision at 1–8.

excess of the rates that would be paid under cost-of-service rate-making.[48] The recapture would occur at the time of a merger or acquisition, or in the event GMP's shares trade at or above book value for a period of six months; the proceeds would be returned to GMP ratepayers either as a rate reduction or as cash.[49]

Vermont Electricity Consumers Coalition and Vermont Ski Areas Association

Neither the Vermont Electricity Consumer Coalition nor the Vermont Ski Areas Association presented any evidence or witnesses in this case. VECC and VSAA argue that this Board should reject the Third MOU and GMP's requested rate increase.[50] They contend that imprudent and non-used-and-useful costs, including those associated with the HQ-VJO Contract, should not be included in rates.[51] VECC also asserts that this Board should disallow costs associated with the 97-01 Agreement because (1) the 97-01 Agreement was imprudent, and (2) shareholders received the $8 million payment provided for under the 97-01 Agreement so shareholders, not ratepayers, should pay the higher costs associated with the 97-01 Agreement.[52] VECC and VSAA contend that GMP should suspend its common stock cash dividend before being granted a rate increase.[53] Both VECC and VSAA argue that bankruptcy is a legitimate business process that can result in lower electricity rates, and that has much lower risks than GMP has alleged.[54] VECC and VSAA also assert — without any citation to evidence — that GMP's retail electric rates are considerably higher than national averages and have a significant negative impact on Vermont's competitiveness and on the economic well-being of the Vermont public.[55] Finally, VECC and VSAA assert that the elimination of seasonal rates should be implemented in a manner that is revenue neutral on a calendar-year basis.[56]

48. AARP Post-Hearing Memorandum at 2–3.
49. AARP Proposal for Decision at 20–22; AARP Post Hearing Memorandum at 3.
50. VECC Brief at 7; VSAA Reply Brief at 1.
51. VECC Brief at 3; VSAA Reply Brief at 2.
52. VECC Brief at 3–4.
53. VECC Brief at 2, 7; VSAA Reply Brief at 2.
54. VECC Brief at 4–5; VSAA Reply Brief at 2.
55. VECC Brief at 2, 5–6; VSAA Reply Brief at 2.
56. VECC Brief at 6; VSAA Reply Brief at 1.

Members of the General Public

In addition to hearing from formal parties in this Docket, this Board conducted a public hearing in order to gather information and opinion from the public at large. For this hearing, the Board listened to comments from six locations throughout GMP's service territory[57] via the Vermont Interactive Television Network.[58] Two members of the public spoke at the public hearing; one supported the original requested rate increase, the other opposed it.

Members of the general public also contacted the Board with their opinions on the issues being considered in this Docket. We received five written letters and email messages opposing GMP's original requested rate increase, and four letters opposing the Third MOU. In addition, since the close of the hearings, the Board has received 37 phone calls and 16 letters from GMP customers who opposed the settlement.

This Board also received letters from Central Vermont Public Service Corporation, Citizens Utilities Company, and the Town of Stowe Electric Department supporting GMP's original request. These letters cited concerns about the impact a GMP bankruptcy would have on their financial condition, given the HQ-VJO Contract's step-up provisions.

III. Criteria for Decision

By statute, we are required to set rates that are "just and reasonable." 30 V.S.A. § 218(a). This Board has typically employed cost-of-service rate-making methodologies to do this. However, this Board has noted that the statutory standard of "just and reasonable" affords us broad discretion in the manner in which we determine rates.[59] The Vermont Supreme Court has stated:

> The statutory basis of the Board's regulatory authority is extremely broad and unconfining with respect to means and methods available to that body to achieve the stated goal of adequate service at just and reasonable rates. 30 V.S.A. § 218 authorizes the Board to set rates, tolls, charges or schedules or to change regulations, measurements, practices or acts of the utility relating to its service in order to insure those reasonable rates

57. *See* Appendix A for a list of the six locations.
58. In addition, a Board analyst went to each of the six locations.
59. *See, e.g.*, Docket 5983, Order of 6/8/98 at 2, 22–23, 25.

> and adequate service. The choices the Board makes in this area are subject to great deference in this Court so long as it can be shown they are directed at proper regulatory objectives.

In re Green Mountain Power Corp., 142 Vt. 373, 380 (1983) (citations omitted); *accord*, *In re Citizens Utilities Co.*, No. 97-436, slip op. at 7 (Vt. Dec. 15, 2000).

Although we have broad discretion in the manner in which we determine rates that are just and reasonable, it is well-settled that in our determination we must balance the interests of the ratepayers and the interests of the utility. *In re Citizens Utilities Co.*, slip op. at 19–20; *In re Village of Hardwick Electric Dept.*, 143 Vt. 437, 443 (1983); *In re New England Telephone and Telegraph Co.*, 115 Vt. 494, 512 (1949).

The United States Supreme Court has, likewise, long held that regulatory agencies have broad discretion in the method used to set rates, so long as the end result represents a balancing of ratepayer and shareholder interests and falls within a range of reasonableness.[60] The Court first articulated this "end result" test in 1944, in interpreting the "just and reasonable" requirement of the Federal Power Act:

> [I]t is the end result reached not the method employed which is controlling. It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important.

FPC v. Hope Natural Gas Co., 320 U.S. 591, 602 (1944) (citations omitted). This determination of whether the end result is reasonable requires "a balancing of the investor and consumer interests." *Id*. at 603.

Since *Hope*, the United States Supreme Court has consistently followed the "end result" test and its requirement that both ratepayer and investor interests be considered. For example, in *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968), the Court reaffirmed that "investors'

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60. It is appropriate for us to look to U.S. Supreme Court precedent for additional guidance in interpreting the "just and reasonable" rate requirement of Vermont statute. The Vermont Supreme Court has not only itself relied on that precedent, but also has expressly noted that its own decisions interpreting the "just and reasonable" standard have "consistently followed" U.S. Supreme Court precedent. *Petition of Village of Hardwick Electric Dept.*, 143 Vt. at 442–443; *see In re Citizens Utilities Co.*, slip op. at 19–20; *In re New England Telephone and Telegraph Co.*, 115 Vt. at 512–513.

interests provide only one of the variables in the constitutional calculus of reasonableness." 390 U.S. at 769. In that case the Court further explained that:

> The Commission cannot confine its inquiries either to the computation of costs of service or to conjectures about the prospective responses of the capital market; it is instead obliged at each step of its regulatory process to assess the requirements of the broad public interests entrusted to its protection by Congress. Accordingly, the "end result" of the Commission's orders must be measured as much by the success with which they protect those interests as by the effectiveness with which they "maintain credit and attract capital."

Id. at 791.

More recently, in *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989), the United States Supreme Court strongly reaffirmed *Hope* and its progeny:

> [A]n otherwise reasonable rate is not subject to constitutional attack by questioning the theoretical consistency of the method that produced it. "It is not theory, but the impact of the rate order which counts." *Hope*, 320 U.S., at 602. The economic judgments required in rate proceedings are often hopelessly complex and do not admit of a single correct result. The Constitution is not designed to arbitrate these economic niceties.

488 U.S. at 314.

In *Duquesne*, the Court emphasized that the Constitution does not bind the States to follow a single rate-making methodology:

> The adoption of a single theory of valuation as a constitutional requirement would be inconsistent with the view of the Constitution this Court has taken since *Hope Natural Gas, supra*. As demonstrated in *Wisconsin v. FPC*, circumstances may favor the use of one ratemaking procedure over another. The designation of a single theory of rate-making as a constitutional requirement would unnecessarily foreclose alternatives which could benefit both consumers and investors. The Constitution within broad limits leaves the States free to decide what ratesetting methodology best meets their needs in balancing the interests of the utility and the public.

Id. at 316 (footnote omitted).

In sum, our statutory mandate is to set rates at a "just and reasonable" level. In so doing, we must take into account the financial viability of the utility, so long as the end result remains fair to ratepayers. Within the confines of these fundamental requirements, we have considerable latitude in the manner in which we determine rates in any specific proceeding.

IV. Analysis of Issues and Positions

A. GMP's Current Financial Situation and Its Roots

1. GMP's Current Financial Situation

All parties have acknowledged that GMP is financially strained. However, the parties differ in their assessments of the extent of GMP's financial difficulties, and the degree to which this Board should consider the Company's financial situation when making its decision in this case. In order to evaluate the parties' arguments on these points, we first examine GMP's current financial situation and its causes.

Findings

1. GMP presently does not have access to long-term capital markets. Findings 2–19, below.

2. On a consolidated basis, including non-recurring charges, GMP's net income applicable to common stock has fallen from a positive $8.01 million in 1997 to a negative $4.22 million in 1999. Excluding discontinued operations, during the first nine months of 2000, income was only $1.036 million, in contrast to $2.642 million earned during the same period in 1999. Exh. IBM Reb-2 at 46; exh. Board-Reb-2, document marked as PSB 1-1g at 14 (GMP September 2000 10-Q); *see also* Appendix E.1, below.

3. At current rate levels, GMP is not recovering its costs. Tr. 11/30/00 at 125–126 (Sedano).

4. GMP's balance sheet and leverage ratios have deteriorated from 1995 through September 30, 2000. The Company's long-term debt (including current maturities of long-term debt but excluding capitalized leases) to total capital ratio was 44.6 percent on September 30, 2000, up from 41.8 percent at 1997 year end. Exh. IBM Reb-2 at 46; exh. Board-Reb-2, document market as PSB 1-1g at 3 (GMP September 2000 10-Q).

5. As of September 30, 2000, GMP's total debt balance of $103.44 million (including capitalized leases) includes $16.30 million in short-term obligations. Historically, GMP's short-term obligations have been a significantly smaller component of its total debt. Exh. Board-Reb-2, document market as PSB 1-1g at 3 (GMP September 2000 10-Q).

Expected Capital Needs

6. Over the next three years, GMP will need to refinance $24 million in first mortgage bonds, $8 million of which will come due in October of each year. Brock reb. pf. at 31.

7. GMP's anticipated financing needs and debt maturities over the next three years can be summarized as follows:

Year	Scheduled Debt Maturities ($'s in millions)	Sinking Fund Requirements ($'s in millions)	Total
2001	8.00 + 30.0 (forecasted)[61]	1.70	26.70
2002	8.00	1.70	9.70
2003	8.00	1.70	9.70
2004	—	1.70	1.70

Exh. IBM-Reb-2 at 30.

Access to Debt as a Source of Funds

8. During the pendency of this rate case, Moody's Investors Service lowered GMP's credit ratings on senior secured obligations from Baa2 to Ba1. Similarly, Fitch, Inc. lowered the current rating on GMP's first mortgage notes from BBB+ to BB+. Both new ratings are below investment grade.[62] As of August 25, 2000, Moody's, Fitch's, and Standard & Poor's credit ratings for GMP remained on Negative Watch, Rating Watch - Negative, and Credit Watch Negative, respectively. Exh. GMP-Reb-3, documents marked as reb. exh. NRB-9, exh. reb. NRB-15.

9. External credit lines consist of a $15.0 million revolving credit facility from Fleet National Bank and Citizens Bank of MA, which expires on June 20, 2001,[63] and a $15.0 million

61. This reflects the need to refinance short-term credit lines that expire in 2001. The existing credit lines total $30 million, although they are not expected to be fully utilized at the time of their expiration.

62. The BBB+ rating was by Duff & Phelps Credit Rating Co., which was subsequently acquired by Fitch, Inc.

63. GMP originally arranged financing through Fleet Bank and others in 1997, obtaining a $45 million, three-year unsecured revolving credit agreement. Due to the Company's deteriorating financial condition, the lenders insisted on amending the facility in 1998 and again in 1999. Each change resulted in a lowering of the commitment amount

(continued...)

secured revolving credit facility from KeyBank National Association which expires on September 19, 2001. Exh. Board-Reb-2, document marked as PSB 1-1g at 24 (GMP September 2000 10-Q).

10. To obtain the KeyBank facility, GMP entered into a separate Energy Purchase Option Agreement with Energy East Corporation in which Energy East made an option payment of $15 million to GMP in exchange for an option to purchase energy from designated GMP generation facilities (up to specified total amounts) over a 15-year period. Under the Agreement, GMP is required to maintain $15 million in a certificate of deposit at KeyBank to secure the KeyBank credit facility. Brock reb. pf. at 22–23.

11. The KeyBank facility is quite unusual — it is collateralized by the $15 million certificate of deposit since GMP was not eligible for conventional working capital financing from KeyBank in any amount. Smith reb. pf. at 2–3.

12. As of September 30, 2000, GMP had borrowed $9.6 million against the KeyBank credit facility, and nothing against the Fleet/Citizens credit facility. Exh. Board-Reb-2, document marked as PSB 1-1g at 24 (GMP September 2000 10-Q).

13. The Fleet/Citizens credit facility provides the lenders the right to terminate the facility if GMP is forced to take a FAS 5 writeoff of the above-market power costs arising from the HQ-VJO Contract, if GMP is forced to abandon FAS 71, or if the final rate order in this case is deemed unsatisfactory to the banks. Brock reb. pf. at 21–22; tr. 11/20/00 at 238–239 (Dutton).

14. GMP is not, in its current financial condition, eligible for conventional working capital financing from Key Bank in any amount. Smith reb. pf. at 3.

15. GMP will not have access to conventional bank financing until issues related to the HQ-VJO Contract cost recovery are resolved and GMP establishes cash flows and earnings projections that will satisfy lenders. Smith reb. pf. at 6–7.

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63. (...continued)
and a shortening of the commitment duration, the imposition of more restrictive financial covenants, and an increase in the borrowing rate of the facility. A third amendment to the credit facility restored the line of credit commitment to $15.0 million, but added certain measures which increased the banks' oversight of GMP. Brock reb. pf. at 19–21.

Access to Equity as a Source of Capital

16. GMP's stock price has fallen from 88 percent of book value as of February 27, 1998, to 44 percent of book value as of July 31, 2000. GMP's stock price on September 3, 1997 (before the dividend cut) was 33 percent higher than that on February 27, 1998, so that prior to the dividend cut, GMP's stock price exceeded book value. Exh. GMP-Reb-3 document marked as NRB-8 at pages 2, 4; exh. Board-Reb-2, document marked as PSB 1-3.

17. Four significant events have precipitated changes in GMP's stock price since 1997. These four events and their effects are:

- First and most significant was GMP's September 3, 1997, announcement of a 50 percent dividend cut — In the two days following that announcement, GMP's stock price fell almost $6 per share or 23 percent. The press release accompanying GMP's decision cited the likelihood of lower earnings due to losses in unregulated subsidiary operations and three months of warmer than normal weather as reasons for the cut;[64]
- This Board's February 27, 1998, ruling in Docket 5983 — In the week following this decision, GMP's stock price fell $1.44 or approximately 7 percent;
- GMP's November 23, 1998, announcement of a further 50 percent reduction in the quarterly dividend — In the week following this announcement, GMP's stock price fell $1.38 or approximately 10 percent; and
- GMP's November 13, 2000, announcement that it had reached a settlement with the Department in this Docket — In the three days following this announcement, GMP's stock price rose $1.95 or 25 percent.

Exh. Board-Reb-2, document marked as PSB 1-3 at 1–2; tr. 11/20/00 at 169 (Dutton).

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64. GMP's own press release stated as follows:

> The Company's common stock dividend payout has ranged from 94 to 96 percent of earnings over the past four years, and earnings for 1997 and 1998 are expected to be lower than 1996 earnings . . . . The lack of earnings growth by Green Mountain Power over the past four years, and the likelihood of lower earnings this year and next indicate that the previous payout level is no longer advisable . . . .
>
> . . .
>
> The decline in 1997 earnings reflects warmer than normal weather in the first quarter of 1997 *and the impact of costs related to the development of the Company's retail energy marketing business, Green Mountain Energy Resources L.L.C.*

Exh. Board-Reb-2, Green Mountain Power News Release, September 3, 1997, "Green Mountain Power Announces Dividend Reduction" included as part of document marked PSB 1-1(h) (emphasis added).

18. From 1990 through 1995, GMP's stock price outperformed the Dow Jones Utility Average, at times quite significantly. By mid-1996, GMP's stock price was no longer outperforming the Dow Jones Utility Average; instead for the next 15 months, GMP's stock performance closely tracked the Dow Jones Utility Average. Exh. Board-Reb-5.

19. GMP's stock price began to radically diverge from the Dow Jones Utility Average immediately following its September 3, 1997, announcement of a 50 percent reduction in the quarterly dividend. This divergence continued through the close of the record. Exh. Board-Reb-5.[65]

Discussion

The evidence in the record demonstrates that GMP's financial health is strained. The Company's recent earnings history shows losses or near losses, declining internal funds for reinvestment, a draw-down of the retained earnings account, and increasing reliance on short-term debt.[66] Such heavy reliance on short-term debt is undesirable both because it is routinely higher priced than long-term debt and because its term does not match the long-term view needed for efficient management of long-lasting utility infrastructure investments.

Since 1996, GMP's earnings have been on the decline. In 1998, 1999, and the first nine months of 2000, GMP has had negative earnings per share.[67] These losses, and GMP's decision to continue paying unjustifiably high dividends until the 1998 reduction of the dividend to its present level, have eroded the Company's financial position and have left GMP unable to obtain conventional long-term financing.[68]

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65. *See* Appendix E.2 for a slightly modified version of the chart that was admitted as exh. Board-Reb-5.

66. The President of KeyBank's Vermont District, Charles P. Smith, characterized GMP's current financial condition as "very precarious." Smith reb. pf. at 3.

67. *See* Table on p. 31.

68. We distinguish between GMP's present dividend of $0.55 per share and the previously higher dividends of $2.12 per share (and $1.10 after the reduction). Our observations relate to the latter amounts, which were the product of an extended and unsustainable policy of high dividend payout ratios that GMP elected not to cure. Although some have questioned the reasonableness of paying any dividend in the Company's current financial situation, we recognize that to reassure investors, dividend payments at the present levels are reasonable. *See* exh.-GMP-Reb-2 (Third MOU, ¶10); tr. 12/1/00 at 96–97 (Ross).

Lenders have responded to GMP's financial difficulties by placing additional restrictions on loans and reducing the size of those loan commitments. For example, in 1997, GMP was able to negotiate $45 million in short-term financing through Fleet Bank and other lenders. In the past three years, the lenders have reduced the size of the credit facility to $15 million and placed additional restrictions upon the loan, so that absent a favorable regulatory decision here, GMP may lose even this smaller credit line. Recently, to obtain a second $15 million credit facility, GMP had to enter into an arrangement with Energy East to obtain a $15 million certificate of deposit to secure the credit line.

Similarly, investors' perception of GMP's financial health is reflected in the stock price. The significant decline in the stock price since mid-1997 shows that investors view GMP much less favorably today and are concerned over GMP's financial health. In particular, four events (two dividend reductions, one regulatory decision, and one partial regulatory settlement) over the last three years have caused significant stock price movements. The first three of these events caused the stock price to decline. Even though the fourth event caused the stock price to increase, at the close of evidence in this docket, GMP's stock price was still significantly depressed, only the prospect of regulatory relief (made more likely by the Third MOU) offered a likelihood of obtaining capital from investors. Its November 15, 2000, closing price of $9.69 was approximately 63 percent below its September 3, 1997, closing price of $26.0625.[69] This compares with a 75 percent increase in the Dow Jones Utility Average over the same time period.[70] In addition, the market value of GMP's stock has fallen dramatically relative to its book value over the approximately three years ending July 30, 2000, dropping from approximately $26 dollars a share just prior to the dividend cut to $8.125 per share on July 31, 2000.[71]

The evidence also shows that GMP absolutely needs access to sources of capital. This is true for all electric utilities in the ordinary course of operations of their very capital-intensive

69. Exh. Board-Reb-2, document marked as PSB 1-3 at 1 and 2.

70. *See* Appendix E.1 for a graphical comparison of GMP's stock price and the Dow Jones Utility Average over the last 10 years.

71. *See* Finding 16, above; exh. GMP-Reb-3, document marked as reb. exh. NRB-8 at pages 2, 4; exh. Board-Reb-2, document marked as PSB 1-3.

industry. However, it is particularly true for GMP in its present circumstances. The Company faces considerable upcoming debt maturities and sinking fund requirements, which GMP must refinance,[72] and thus needs to regain access to the broader capital markets to obtain long-term funding in a timely manner. Moreover, the long-term re-establishment of GMP's financial health and the ability to raise funds from the long-term debt and equity markets is fundamental to the utility's ability to stay abreast of its increasing service needs due to growing population and commerce (a trend that is particularly noticeable in Chittenden County).

GMP's stock price, combined with the Company's weak financial condition, has significantly reduced GMP's ability to raise equity capital at the present time to meet these financial obligations. GMP also cannot obtain additional funding through investment-grade debt obligations as bond rating agencies have lowered the Company's rating to below investment-grade levels. And (although necessary in the recent past) the Company's practice of shifting funding of an increasing proportion of its capital needs to short-term lending facilities is not sustainable over the long term. Moreover, continued access to such short-term lending facilities is uncertain, due to their June and September 2001 maturities and various restrictive covenants, including explicit conditions that allow the lenders to cancel or alter the facilities based upon Material Adverse Changes.[73] Thus, GMP's current ability to finance its continuing regulated utility operations through any type of short or long-term debt is questionable.

2. Roots of GMP's Current Financial Situation

GMP's current financial situation is the result of a wide variety of factors, including both management decisions and factors outside the Company's control. However, the three most significant factors are directly related to management decisions. These are:

- the performance of some of the Company's unregulated subsidiaries;
- GMP's historic dividend payment policy; and
- GMP's imprudent actions in locking-in early to the HQ-VJO Contract, actions that led to power costs well above market prices, to this Board's 1998

72. *See* Finding 7, above.

73. *See* Finding 13, above.

decision to disallow a portion of the Contract's costs, and to additional costs attributable to GMP's efforts to mitigate these higher power costs.

Each of these contributing factors is discussed briefly below.

a. Unregulated Subsidiaries[74]

Findings

20. From the late 1980's through September 30, 2000, GMP invested $43.6 million in three unregulated subsidiaries: Green Mountain Propane Gas, Limited; Green Mountain Resources, Inc.; and Mountain Energy, Inc. Of that amount, GMP has recovered only $21.7 million from asset sales. Of the remaining unrecovered amount ($21.9 million), GMP has already recognized write-offs and losses of almost $13 million. GMP still has almost $8.2 million invested in Green Mountain Propane Gas, Limited, Green Mountain Resources, Inc., and Mountain Energy, Inc. and there is neither a defined period for the recovery of that investment nor any guarantee of eventual recovery. Exh. Board-Reb-2, document marked PSB 1-1(f); tr. 11/29/00 at 142–143 and 147–148 (Brock).

21. GMP decided to sell its subsidiaries, including Green Mountain Propane Gas, Limited, a company which sold propane gas at retail in Vermont and New Hampshire, in 1997, prior to the proceedings in Docket 5983. GMP's remaining investment in Green Mountain Propane Gas, Limited, as of September 30, 2000, is $365,641. Under the terms of the sale agreement, GMP will receive up to an additional $400,000 in cash from the purchaser if Green Mountain Propane

74. This section focuses on only three of GMP's unregulated subsidiaries: Green Mountain Propane Gas, Limited; Green Mountain Resources, Inc.; and Mountain Energy, Inc. GMP has two additional unregulated subsidiaries: Lease-Elec, Inc., which rents water heaters to ratepayers; and GMP Real Estate Corporation which manages GMP's real estate transactions. These unregulated subsidiaries are not discussed in this Order because each is a comparatively small investment whose losses are not material to GMP's overall financial status. Exh. Board-Reb-2, document marked as GMP 1999 FERC Form 1 at 103, 224–225.

GMP also has a percentage ownership share in: (1) Vermont Electric Power Company, Inc., which provides transmission of electric power within Vermont; (2) Vermont Yankee Nuclear Power Corporation which owns and operates the Vermont Yankee nuclear power plant; (3) New England Hydro Electric Transmission Company and (4) New England Hydro Transmission Corporation, both of which operate transmission lines to transport Hydro-Québec power to New England; (5) Highgate Transmission InterConnection and (6) Vermont Dedicated Metallic Neutral Return Conductor, which are transmission facilities; and (7) W.F. Wyman Station, (8) Stony Brook, and (9) Joseph C. McNeil Plant, all of which are generating plants. The costs and rates of these entities are regulated by the Federal Energy Regulatory Commission. Exh. Board-Reb-2, document marked as GMP 1999 FERC Form 1 at 103–103.7, and 450–450.1.

Gas, Limited, achieves certain performance goals. Exh. GMP-45 at 11; exh. Board-Reb-2, documents marked as PSB 1-1(a) and PSB 1-1(f); tr. 11/29/00 at 139–140 (Brock); tr. 11/20/00 at 70 (Dutton).

22. Green Mountain Resources, Inc., was formed to explore opportunities in the emerging competitive retail energy market. Its major investment was in GMER. GMP sold part of its interest in GMER in 1997, and the remaining portion in 1998. GMP's remaining investment in Green Mountain Resources, Inc., as of September 30, 2000, is $12,971. Exh. GMP-45 at 12; exh. Board-Reb-2, documents marked as PSB 1-1(a) and PSB 1-1(f).

23. In 1996, Green Mountain Resources, Inc., together with subsidiaries of Hydro-Québec, Consolidated Natural Gas Corporation, and Noverco, Inc., participated in the retail sales of energy in pilot programs in New Hampshire and Vermont through Green Mountain Energy Partners L.L.C. Over the next two years, all three of these companies concluded that this enterprenurial venture was unattractive and withdrew from it. Exh. GMP-12 at 13.

24. In 1997, many of GMP's key personnel transferred to the unregulated GMER. These included the President/Chief Executive Officer, the Vice President of Energy Resource Planning, the Vice President of Marketing, the Vice President of Resource Development, and the General Counsel, as well as a number of GMP's "Director Level" employees. Docket 5983, Order of 2/27/98 at 159 (Finding 451).

25. Mountain Energy, Inc., invests in energy generation, energy efficiency and waste water treatment projects. A portion of Mountain Energy, Inc., was sold in June 2000, an additional portion is under contract to be sold, and the remaining portion is being offered for sale. GMP's remaining investment in Mountain Energy, Inc., as of September 30, 2000, is $7,800,000. The pending sale is expected to net GMP approximately $4 million when the transaction closes. Exh. Board-Reb-2 (GMP June 2000 10-Q at 6); tr. 11/29/00 at 144–145 (Brock).

26. As of September 30, 2000, GMP's net utility plant investment was $177.3 million. Exh. Board-Reb-2, document marked as PSB 1-1g at 24 (GMP September 2000 10-Q).

27. During the same time period that GMP invested $43.6 million in non-regulated subsidiaries, the Company invested $144.6 million in electric plant and related operations. Exh. Board-Reb-2 (GMP 1990–1999 10-Ks).

Discussion

From 1990 until 1998, GMP consistently obtained a favorable return on its investments in regulated utility operations. Over that time period, GMP earned slightly above or just below the Company's allowed rate of return.[75]

Over the last 10 years, GMP has expanded significantly beyond its regulated utility operations, making substantial investments in three unregulated subsidiaries: Green Mountain Propane Gas, Limited; Green Mountain Resources, Inc.; and Mountain Energy, Inc. In sharp contrast to the favorable earnings derived from regulated utility operations, for the last decade these subsidiaries have either lost money or earned substantially less than the Company's allowed rate of return for its regulated operations. (See the charts below and in the graphs in Appendix E.1.)

Green Mountain Power's Return on Common Equity 1990 – 1999[76]										
	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Regulated ROE (percent)	13.21	13.18	13.72	12.22	11.42	11.35	11.83	11.05	-2.32	2.15
Unreg. ROE (percent)	-2.19	2.00	-2.45	-0.27	5.62	6.68	3.38	-6.14	-10.16	-39.46
Allowed ROE (percent)	12.00	12.50	12.40	12.10	11.30	10.88	11.25	11.25	11.25	11.25

Green Mountain Power's Earnings on Common Equity 1990 – 1999[77]										
	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Regulated Earnings ($000s)	8,658	9,442	11,284	9,860	9,097	9,243	10,159	9,602	-2,105	1,960
Unregulated Earnings ($000s)	-457	-192	-638	-380	866	1,035	402	-1,975	-2,473	-6,719

75. In addition, for 7 of the first 8 years of the decade, the Company's regulated operations earned a higher rate of return than the national average for investor-owned electric utilities. Exh. Board-Reb-2, document marked as PSB 1-1(e).

76. Exh. Board-Reb-2, document marked as PSB 1-1(d).

77. Exh. Board-Reb-2, document marked as PSB 1-1(c).

In the early and mid-1990's, the performance of these three subsidiaries did not have a significant adverse impact on GMP's consolidated earnings. The size of the investment was not very large and, during some of those years, GMP earned a positive, if low, return on its unregulated operations.

That situation changed by 1997. GMP's investment in unregulated subsidiaries had grown over time so that by 1997, it represented a sizeable percentage of GMP's total capital investments. In all, GMP invested $44 million in the three main unregulated subsidiary operations. To put this in perspective, over that same period the Company invested $144.6 million in total utility plant.[78] Similarly, as a measure of scale (although not directly comparable), GMP's rate base (utility plant in service) as of September 30, 2000, was $177.3 million.[79] By 1997, GMP's unregulated operations incurred substantial financial losses, with adverse effects for the profitability of the Company as a whole. Although GMP has since sold (or written off) large portions of its investments in unregulated subsidiaries, these losses greatly contributed to the Company's current financial condition. And, even with the reduced investment, unregulated earnings continued to have a significant negative impact on the Company's consolidated earnings in 2000: in just the first nine months of 2000, GMP's unregulated activities lost $1,506,000 (largely as a result of a $1.5 million write-off in the second quarter), and witnesses testified it was possible that additional write-offs of up to $5 million could occur in the fourth quarter of 2000.[80]

The performance of GMP's unregulated subsidiaries also contributed to GMP's stock price decline over the last three years. GMP's stock price radically and immediately diverged from the Dow Jones Utility Average following the Company's September 3, 1997, 50 percent cut in its dividend, the first major drop in GMP's value relative to other utilities.[81] GMP's own announcement of the dividend reduction highlighted the losses attributable to unregulated operations as a major factor in this stock price decrease.

78. Exh. Board-Reb-2, document marked as GMP 1990-1999 10-Ks.

79. *See* Finding 26, above.

80. Exh. Board-Reb-2, document marked as PSB 1-1(c); tr. 11/21/00 at 15–16 (Brock); tr. 11/30/00 at 189–190 (Koliander).

81. *See* Finding 19, above.

> The decline in 1997 earnings reflects warmer than normal weather in the first quarter of 1997 *and the impact of costs related to the development of the Company's retail energy marketing business, Green Mountain Energy Resources L.L.C.*[82]

In essence, GMP's statement confirmed that the costs of GMP's unregulated ventures were a major reason for the low earnings that made a dividend cut necessary. Investors' perceptions of the merits of investing in those unregulated ventures can be gauged by the resulting drop in GMP's stock price.

The financial impacts of the unregulated subsidiary operations were exacerbated by the non-financial impacts GMP suffered as a result of the activities of these three subsidiaries. Specifically, a sizeable number of key GMP personnel left the Company to work for GMER.[83] Even more important, in the key years of 1996 to 1999, GMP's management and Directors devoted a significant amount of attention to activities related to unregulated ventures.

In all, GMP's three major ventures into unregulated operations have been costly and have contributed greatly to the Company's present financial distress.

b. GMP's Historic Dividend Policy

Findings

28. From 1995 through the first nine months of 2000, GMP paid the following amounts in common and preferred cash dividends:

Year	1995	1996	1997	1998	1999	2000 (nine months)
Dividends (million $)	10.82	11.46	9.64	6.33	4.10	2.25

These amounts reflect two dividend cuts reducing the annual dividend from $2.12 to $0.55 per share. Exh. IBM-Reb-2 at 44–45; tr. 11/20/00 at 66 (Dutton).

82. Exh. Board-Reb-2, document marked PSB 1-1(h) (Green Mountain Power News Release, September 3, 1997, "Green Mountain Power Announces Dividend Reduction") (emphasis added).

We note that GMP's Chief Executive Officer, Christopher L. Dutton, testified that the Company did not decide to reduce its dividend because of the performance of its unregulated subsidiaries. Tr. 11/20/00 at 169–170 (Dutton). However, the Company's press release issued contemporaneously with the dividend cut makes clear that, at the time, GMP described the unregulated subsidiary losses as one of the two key factors requiring the dividend reduction.

83. *See* Finding 24, above.

29. A general rule of thumb is for cash dividends to approximate 60 percent of earnings, with the remaining 40 percent reinvested. Tr. 11/20/00 at 68 (Dutton).

30. The Company's actual dividend payout ratio exceeded 80 percent in every year from 1989 to 1997. Exh. IBM-Reb-2 at 46–47.

31. Despite two reductions of its common dividend during the 1995–2000 period, GMP's dividend payout exceeded its targeted payout ratio. It has been well above the typical targeted payout rate of the average electric utility in every year since 1989. Findings 28–30, above.

32. GMP's dividend payment policy has resulted in an unusually low level of earnings available for reinvestment. Exh. Board-Reb-2, document marked as PSB 1-1g at 3 (GMP September 2000 10-Q).

Discussion

Dividends are the traditional method by which investors in the equities of utility companies earn a return. In setting the common dividend, the management and the Board of Directors of the individual utility seek to balance the internal financial needs of the utility with a desire to provide a competitive investment return. To achieve consistency over time and to avoid volatility with respect to the absolute dividend level, this balancing act is often accomplished through establishment of a policy to maintain the dividend within a targeted range of dividend payout ratios (dividends/net income). Typically, utilities seek to disseminate approximately 60 percent of their earnings in the form of dividends and reinvest the remaining 40 percent.[84]

By contrast, GMP has maintained a dividend payout ratio that has exceeded 80 percent in every year since 1989,[85] and has often been above 90 percent (the last six years are shown in the following table).[86]

Green Mountain Power Dividend History

	1995	1996	1997	1998	1999	9 Mos '00
Earnings per share	$2.26	$2.22	$1.57	-$0.80	-$0.79	-$0.09

84. Tr. 11/20/00 at 68 (Dutton).

85. Exh. IBM-Reb-2 at 46–47.

86. *Id.*; exh. Board-Reb-2, document marked as PSB 1-1g (GMP September 2000 10-Q and GMP 1996–1999 10-Ks).

Green Mountain Power Dividend History						
Dividends Declared per common sh.	$2.12	$2.12	$1.61	$0.96	$0.55	$0.41
Dividend Payout Ratio	93.8%	95.5%	102.5%	NMF	NMF	NMF
Retained Earnings ($000s)	26,412	26,916	26,717	17,508	10,344	7,594
Change in Retained Earnings ($000s)	685	504	-199	-9,209	-7,164	-2,750

As early as 1991, GMP had recognized the problems associated with the high dividend payout ratio (then in excess of 90 percent). This led the Company to request that this Board increase rates for GMP customers — in order to allow the Company to earn a higher return and thereby lower the dividend payout ratio. This Board, while acknowledging the problems associated with the high dividend payout ratio, rejected GMP's request to have ratepayers fix a problem caused by GMP's management and Board of Directors. This Board noted that GMP's management had the responsibility for setting reasonable dividend payout ratios.[87] Despite this, GMP waited until declining earnings, particularly from unregulated operations, forced the Company to reduce the dividend in 1997.

GMP's high dividend payout ratio thus used substantial sums that typical utilities would retain for investment. This policy has adversely affected GMP's cash flow and has left earnings available for reinvestment at an extraordinarily low level for a utility. As a result, the sustained high payout ratio that GMP maintained until December of 1998 has contributed to GMP's current constrained financial condition.[88]

c. GMP's High Power Costs from Hydro-Québec

A third cause of GMP's current financial distress is GMP's high power costs, of which by far the most important are those paid to Hydro-Québec; costs that themselves result from the imprudent actions of GMP and its management in deciding to lock-in early to the HQ-VJO Contract in 1991.

GMP and the other joint owners of the Highgate interconnection facilities originally negotiated the HQ-VJO Contract in 1987, committing to purchase 340 MW of non-cancelable

87. Docket 5532, Order of 4/2/92 at 88.

88. *See* fn. 68.

power from Hydro-Québec, with an option to purchase 110 MW of additional power.[89] This Board conditionally approved the purchase of the non-cancelable portion of the HQ-VJO Contract and granted interim approval of the Participation Agreement (under which the VJOs made the power purchased from Hydro-Québec available to other Vermont utilities) in 1990.[90] The HQ-VJO Contract this Board approved had an important condition which allowed Hydro-Québec and the VJOs until April 30, 1991, to commit to the Contract or to express dissatisfaction with the regulatory approvals, which would permit the dissatisfied party to terminate the Contract without any further obligations or damages. In April 1991, the VJOs requested that this Board approve an amendment that extended this date for a party to determine whether it was satisfied with the regulatory approvals until November 30, 1991. The Board approved this modification.[91] Notwithstanding their right to terminate the Contract, on August 29, 1991, GMP and the other VJOs sent Hydro-Québec a letter expressing satisfaction with the regulatory approvals and locking-in to the HQ-VJO Contract more than three months early.[92] By this act, GMP abandoned its right — and obligation — to gather and evaluate market information relevant to the merits of the Contract for the next three months.

In Docket 5983, this Board reviewed for the first time the questions of whether (1) GMP's early lock-in to the HQ-VJO Contract was imprudent and (2) the HQ-VJO Contract was used-and-useful. After hearing extensive evidence, this Board concluded that GMP had been imprudent by committing to the HQ-VJO Contract in August 1991. In particular, this Board found that during the first half of 1991, the market for electricity in Vermont and the northeast had begun to change in ways that raised significant questions as to the overall economic value of the HQ-VJO Contract. The New York Power Authority ("NYPA"), which had a similar contract with Hydro-Québec (and essentially identical pricing) and which shared GMP's views of the merits of the purchase as late as April 1991, examined these market changes and negotiated an

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89. GMP's share of the power purchase from 1995 through 2015 was approximately 114 MW of power, which constituted approximately one-third of the Company's power supply needs over the term of the Contract. GMP also purchased approximately 17 MW of additional power from November 1990 through September 1995.

90. Docket 5330, Order of 10/12/90.

91. Docket 5330-E, Order of 4/30/91.

92. Hydro-Québec had sent a similar letter the day before. *See* generally, Docket 5983, Order of 2/27/98 at 175–189.

extension to its contract lock-in date on August 27, 1991.[93] GMP was aware of these changes, including all of the events in New York. In addition, GMP anticipated a significant drop in its customers' demand for power. Nonetheless, GMP and the VJOs locked-in early to the Contract, only two days after NYPA agreed to the extension of its contract. This Board concluded that, given the information available to GMP, the early lock-in was imprudent.[94]

In addition, this Board found that the HQ-VJO Contract was not used-and-useful. Applying long-standing rate-making principles, this Board found that the HQ-VJO Contract would not produce net present value benefits and was, therefore, not used-and-useful. In fact, GMP's estimate showed that the HQ-VJO Contract was expected to produce significant net economic losses using a wide range of possible scenarios, thus making it un-economic.[95] Because the demand could be served more cost-effectively by other resources, this Board determined that the HQ-VJO Contract was not used-and-useful.[96]

Based upon the conclusion that the Contract was not used-and-useful and that GMP had acted imprudently by locking-in early to the Contract, this Board disallowed $5.48 million of the Contract's 1998 costs.[97] This figure was not based upon a single methodology, but instead represented an amount this Board found to be just and reasonable after examination of five different methodologies.[98] That disallowance of a portion of the HQ-VJO Contract's costs has continued to date.[99]

GMP's efforts to mitigate the high costs of power from Hydro-Québec have also contributed to the present financial situation. GMP negotiated a sell-back arrangement in 1996 in which the Company obtained $8 million in exchange for permitting Hydro-Québec to recall portions of the power at certain times. Hydro-Québec's calls on the power in the recent past have

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93. *See* Docket 5983, Order of 2/27/98 at 196, 199–200, 204–205, 233, 237–238. NYPA obtained a contract extension until November 1992, with broader cancellation rights. In early 1992, NYPA cancelled its contract.

94. Docket 5983, Order of 2/27/98 at 231–241.

95. The evidence demonstrated that the HQ-VJO Contract exceeded the market price of power by between $87 million and $269 million over its remaining life. Docket 5983, Order of 2/27/98 at 208 (finding 637).

96. Docket 5983, Order of 2/27/98 at 245–247.

97. GMP's costs associated with the HQ-VJO Contract totaled over $39 million in 1998.

98. Docket 5983, Order of 6/8/98 at 2, 26–41.

99. As a result, GMP has written off approximately $17.5 million of its HQ-VJO Contract power costs. Brock reb. pf. at 13.

created additional costs to GMP, and placed a strain on the Company's cash flow. For example, the 97-01 Agreement has resulted in costs $12.7 million above the costs in the HQ-VJO Contract during 2000.[100]

d. Summary

According to GMP, this Board's disallowances of a portion of the HQ-VJO Contract costs caused the Company's current financial distress.[101] However, as the above discussion makes clear, several factors have combined to create the current financial situation. The first is the high power costs (a portion of which this Board eventually disallowed) which adversely affected the Company as early as 1996 and 1997. GMP's efforts to address these power costs through sell-back arrangements provided short-term benefits, but also led to higher costs now. Thus they increased the financial stress on GMP.

A second important factor is the performance of some of GMP's unregulated subsidiaries. These have underperformed the Company's regulated operations for at least the last 10 years, with particularly serious effects on the Company's financial health during the last three years. In addition to the adverse financial effects of GMP's unregulated subsidiaries, these ventures led to a large migration of intellectual capital away from the core utility business.

A third major factor is the Company's historic dividend policy. GMP's high dividend payout ratio over the last 10 years has adversely affected GMP's cash flow and reduced the Company's retained earnings. In fact, it was these two factors, not the HQ-VJO Contract disallowance, that precipitated the first major drop in GMP's stock price (which in both dollar and percentage terms, exceeded the drop in stock price following this Board's Docket 5983 disallowance). This Board's disallowance of a portion of GMP's costs under its power supply contract with Hydro-Québec was an additional element added to these three factors. Thus, while the cost disallowances were significant, they contributed to, rather than caused, the Company's current weak financial condition.

100. Tr. 11/20/00 at 251 (Dutton).

101. Brock reb. pf. at 12–18. GMP fails to mention the effects of its investments in unregulated subsidiaries or of its previously high level of dividends.

Since this Board's Order in Docket 5983, GMP has made substantial efforts to reduce costs, by reducing staff (including a very high portion of the Company's executive and management staff), reducing the dividend, and consolidating physical operations. These cost reductions (which GMP estimates produce approximately $5 million in annual savings) have roughly equaled the $5.48 million disallowance this Board adopted in Docket 5983 and deserve strong and positive recognition. However, they have not been sufficient to offset the financial strain caused by the Company's other difficulties.

B. The Economic Consequences of GMP's Early Lock-In to the HQ-VJO Contract

From a financial perspective, by far the most significant expenditures in GMP's cost-of-service at issue in this proceeding are the costs of the HQ-VJO Contract. In this Section, we examine what disallowance would be appropriate if we were to disallow all of GMP's costs associated with the HQ-VJO Contract that are imprudent or non-used-and-useful.

1. Prudence

As explained in Section IV.A.2.c above, in Docket 5983 this Board found that GMP acted imprudently when it locked-in early to the HQ-VJO Contract, thus abandoning its right — *and obligation* — to gather and evaluate market information relevant to the merits of the Contract for the next three months. However, this Board did not specify a final prudence disallowance that applied to rates in years subsequent to that docket.[102] Instead, this Board established a provisional disallowance and set out the method to use in subsequent proceedings to determine the "damages" associated with GMP's imprudent early lock-in to the HQ-VJO Contract:

> Our task, in measuring the harm that has been created by the Company's imprudence, is to compare the cost of the Contract to the cost of the reasonable and prudent portfolio that would have been acquired instead in 1991 and the following years.[103]

102. The disallowance established by this Board in Docket 5983 was a combined prudence and used-and-useful disallowance, and was not the result of a single methodology. Rather, it represented an amount this Board found just and reasonable after examination of five different methodologies. Docket 5983, Order of 6/8/98 at 244–250.

103. Docket 5983, Order of 2/27/98 at 244.

Findings

33. For the years 2001–2004, a reasonable methodology for calculating the prudence damages resulting from GMP's early lock-in to the HQ-VJO Contract is the following: (1) compare GMP's expected costs under the HQ-VJO Contract with the costs of a resource portfolio whose prices range between three and five-and-a-half cents per kWh plus the cost of Installed Capacity;[104] and (2) apply a 7.5 percent discount rate to the resulting stream of damages for 2001-2004 to determine its net present value. As part of the calculation, the resources' costs should be adjusted to reflect their environmental benefits. Tr. 12/1/00 at 70–71 (Steinhurst); Chernick pf. at 16; Steinhurst sur. pf. at 13; exh. IBM-Reb-20 at 3; Docket 5983, Order of 2/27/98 at 27–41.

34. In 2001, GMP's power purchase costs under the HQ-VJO Contract are likely to exceed the cost of a prudent alternative by between \$8.7 million and \$26.6 million; these amounts would be less if an appropriate adjustment is made to reflect the Contract's environmental benefits. Steinhurst sur. pf. at 14; tr. 12/1/00 at 53–54 and 70–71 (Steinhurst); exh. GMP-Reb-31; Docket 5983, Order of 2/27/98 at 249-250; Docket 5330, Order of 1/17/91 at 29.

35. If the Vermont Joint Owners had not locked-in early to the HQ-VJO Contract, it would not have been necessary for GMP to immediately commit to purchasing a single block of 114 MW — all beginning and ending at the same times — to replace its Contract entitlement. Docket 5983, Order of 2/27/98 at 232.

36. A prudent utility in a position similar to GMP's in the early 1990's would have purchased a mix of resources that included resources with a variety of contract structures, including different pricing formulae, contract start dates and durations, ramp-up schedules, and options for contract capacity reduction or increase. Such a mix of resources would have cost between three and five-and-a-half cents per kWh between the early 1990's and the mid-2000's. Steinhurst sur. pf. at 13–14.

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104. Installed Capacity is priced in kW-mo. The formula for calculating the Installed Capacity cost is: the Installed Capacity price times 12 months times 114,000 kW (the capacity GMP will take under the HQ-VJO Contract). Tr. 12/1/00 at 53–54 (Steinhurst).

37. Other New England utilities that needed to purchase additional power in the early 1990's (such as the City of Burlington Electric Department, several Massachusetts municipal utilities, and Unitil) generally signed short- and medium-term contracts (10 years or less). It is likely that if GMP had acted prudently in 1991, it would have entered into at least one similar 10-year contract. Had GMP done so, that contract would be expiring around 2005. Chernick pf. at 14-15, 19.

38. GMP, had it acted prudently, would have planned to replace some of its intermediate-term contracts with purchases from new baseload gas-fired combined-cycle generation units sometime around 2005. Those replacement resources would not yet be under contract, but would probably be priced at levels roughly equivalent to current spot and forward market prices. Steinhurst sur. pf. at 13; tr. 12/1/00 at 71 (Steinhurst).

39. Historically, Installed Capacity (which GMP is required to purchase under the New England Independent System Operator's market rules) has cost approximately $1.50/kW-mo. Recent forward market prices for Installed Capacity in 2001 were approximately $1.85/kW-mo.[105] It is reasonable to expect the actual price of Installed Capacity in 2001 to fall within this range; although it is more likely to be at the upper end of the range. Tr. 12/1/00 at 53–54 (Steinhurst); exh. GMP-Reb-31; exh. Board-Reb-2, document marked as PSB 1-13 at 3–5.

40. The future of the Installed Capacity market is highly uncertain; it is unknown whether there will be similar costs for Installed Capacity, or a replacement product, in the future.[106] Tr. 12/1/00 at 53–54 (Steinhurst).

41. In 1990, there were concerns about the adequacy of New York's transmission system, particularly in light of uncertainties regarding the amount of non-utility generation that would be located in western New York. James reb. pf. at 12–18; exh. GMP-Reb-19, document marked as DAJ-8.

42. Most of the low-cost power supplies in New York, including all of Niagara Mohawk Corporation's and New York State Electric and Gas Corporation's ("NYSEG") coal and nuclear

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105. This is the average of the bid and ask prices shown on exh. GMP-Reb-31 for "Cal 01 ICAP".

106. We conclude that if the Installed Capacity market is ended, it is reasonable to expect that it will be replaced by some factor that will have an equivalent effect on power costs overall.

plants, and much of the existing and planned non-utility generator additions, were located west of the Total-East interface, while Vermont is located east of this interface. There was some transmission capacity across the Total-East interface, but there were uncertainties relating to the amount of the capacity. Parmelee reb. pf. at 7–10; James reb. pf. at 12–18; exh. GMP-Reb-19, document marked as DAJ-8.

43. For planning purposes during the early 1990's, the transfer capacity from New York to New England was expected to range from about 1200 to 1500 MW. VELCO was entitled to 168 to 210 MW, which means that GMP's entitlement was only between 42 MW and 53 MW, assuming a pro rata allocation. James reb. pf. at 8; Parmelee reb. pf. at 11; Oliver reb. pf. at 61.

44. In 1991, GMP was using almost all of its New York-New England transmission entitlement for a purchase from Rochester Gas and Electric. However, that arrangement was expected to ramp down in 1994 and to expire completely in 1995. The effect would be to free GMP's full transmission capacity entitlement (42–53 MW) by the time GMP's Schedule B and C HQ-VJO Contract purchases began. Rosenberg sur. pf. at 40–41; exh. IBM-Reb-6.

45. The HQ-VJO Contract has environmental benefits when compared to other power supply sources available in the early 1990's. This Board has never quantified these benefits, but one scenario presented by the Department in Docket 5330 showed that relying on the HQ-VJO Contract rather than on alternative sources of generation could result in environmental benefits as high as \$187 million (in 1989 dollars) from reduced air pollution over the Contract's duration. Docket 5330, Order of 1/17/91 at 29 and 185 (finding 264); tr. 12/1/00 at 88–89 (Steinhurst).

46. The fossil-fueled generation alternatives available in the early 1990's produced between 4 and 40 times more total critical air pollutants than hydroelectric stations in northern Québec. Docket 5330, Order of 1/7/91 at 9, 30–31.

47. The HQ-VJO Contract provides a measure of stability that is attractive when compared to short-term spot market purchases, but does not provide risk benefits that are comparable to demand-side management measures. Tr. 12/1/00 at 32–33 (Steinhurst).

<u>The Parties' Analyses of Alternative Resources</u>

GMP analyzed twenty alternative portfolios that matched the HQ-VJO Contract's energy and capacity over the 1990–2015 time period; however, GMP did not analyze alternative portfolios that differed significantly from the scale and timing of the HQ-VJO Contract.[107] For each alternative, GMP determined the present value cost (adjusted to reflect the Company's assessment of the HQ-VJO Contract's environmental and risk-mitigation benefits), and compared that cost with the present value cost of GMP's share of the HQ-VJO Contract (Schedules A, B, and C).[108] As a result of this analysis, GMP estimated the prudence damages over the entire life of the Contract to be between $851,000 and $1.36 million using one set of assumptions,[109] or between $7.8 million and $16.8 million using a different set of assumptions.[110] GMP argues that disallowances and foregone revenues over the last two years match or exceed that amount and, therefore this Board should not impose any further prudence-related disallowance.[111]

IBM asserts that this Board should impose a prudence disallowance of $8.4 million (20 percent of GMP's costs associated with the HQ-VJO Contract) in this Docket;[112] IBM justifies this by arguing that a reasonable and prudent alternative to the HQ-VJO Contract would have cost at least 20 percent less than the Contract itself.[113] Central to IBM's analysis of prudent alternatives is the assumption that resources from New York were available to replace GMP's HQ-VJO Contract entitlement.[114] IBM (and the Department) assert that wholesale offers made by NYSEG and Niagara Mohawk Power Corporation to Central Vermont Public Service Corporation, and by NYSEG to the City of Burlington Electric Department are representative of these New York resources.[115]

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107. Oliver pf. reb. at 20–21.
108. Oliver pf. reb. at 21.
109. Oliver pf. reb. at 8 (Tables 3 and 4), 32 and 87, and tr.11/22/00 at 49 (Oliver).
110. Oliver reb. pf. at 6, 7, 23 and 31; exh. GMP-Reb-15; tr. 11/22/00 at 49 (Oliver).
111. GMP Brief on Prudence and Used and Useful Issues at 60, citing Oliver reb. pf. at 9.
112. Rosenberg sur. pf. at 6, 32–33.
113. *Id.* at 32–33.
114. *Id.* at 36–40.
115. *Id.* at 35–44; exh. IBM-Reb-12.

The Department recommends a prudence disallowance of approximately $15.1 million, if this Board decides to set rates using traditional cost-of-service rate-making methodologies.[116] The Department does not recommend a specific prudence disallowance for the remaining term of the HQ-VJO Contract (2001–2015), but does recommend a methodology for calculating the prudence damages for that time period. This methodology has three parts:[117] (1) for the years 2001–2004, GMP's expected costs under the HQ-VJO Contract should be compared with the costs of a resource portfolio whose prices range between three and five-and-a-half cents per kWh[118] plus the cost of Installed Capacity;[119] (2) for the years 2005–2015, GMP's expected costs under the HQ-VJO Contract should be compared with anticipated market prices as forecast by the Department in exh. IBM-Reb-20;[120] and (3) a 7.5 percent discount rate should be applied to the resulting stream of damages for 2001–2015 to determine its net present value.[121]

<u>Discussion</u>

Had GMP acted prudently in the early 1990's, it would not have locked-in early to the HQ-VJO Contract, and instead would have acquired a mix of resources at different times, and with different effective periods. This Board found in Docket 5983 that ". . . [GMP] did not necessarily have to commit to replacement resources for supply equal to the full amount of the

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116. Department Brief at 58, 64. This estimate was calculated by comparing the actual amount that GMP paid Hydro-Québec under the HQ-VJO Contract in 1999 with the Department's determination of the price of a prudent alternative. The Department calculated the price of the alternative by multiplying the actual market price of energy and capacity during the highest 75 percent of the hours in 1999 by the amount of energy purchased by GMP under the HQ-VJO Contract in 1999, and then adding the market value of the corresponding Installed Capacity product times the capacity GMP took under the Contract in that year. Steinhurst sur. pf. at 14; tr. 12/1/00 at 54 (Steinhurst).

117. Tr. 12/1/00 at 70–71 (Steinhurst).

118. The Department asserts it is impossible to know exactly when GMP would have purchased power, or exactly what mix of resources it would have secured if it had not locked-in early to the HQ-VJO Contract, but a prudent mix would have been composed primarily of unit or system power contracts that were executed between 1993 and 1995, expired in roughly 2005, and bore prices in the range of three to five-and-a-half cents. Chernick pf. at 16; tr. 12/1/00 at 70 (Steinhurst).

119. Footnote 104, above, describes the formula for calculating the cost of Installed Capacity.

120. Regardless of the exact mix of resources that GMP selected in the early 1990's, the Department argues that the Company would have planned to replace at least some of those resources with purchases from new baseload gas-fired, combined-cycle generation units sometime around the middle of the decade that began in 2000. Contracts would not yet have been signed for these new purchases, according to the Department; therefore, the Department's market price forecast is the best proxy for the costs that GMP would have incurred under these new contracts. Steinhurst sur. pf. at 13; tr. 12/1/00 at 70–71 (Steinhurst).

121. Exh. IBM-Reb-20 at 3.

Contract."[122] The evidence in this Docket has not persuaded us that this Board's earlier conclusion was incorrect,[123] and we reaffirm that conclusion here. If GMP had not locked-in early to the HQ-VJO Contract, the Company could — and should — have reevaluated its need for new supply resources based on changes in its customers' needs.[124] Such a re-evaluation following cancellation of the HQ-VJO Contract would have shown that GMP did not need to purchase all 114 MW commencing in 1995. Moreover, particularly considering the changing load forecasts and market prices, GMP would not have needed to make its decision to replace the full 114 MW immediately, but instead could have waited to commit to portions of its replacement purchase. Unfortunately, GMP's analyses in this proceeding only evaluated portfolios that mirror the magnitude and timing of the Company's purchases under the HQ-VJO Contract and assumed that the purchase decision for the full 114 MW needed to be made immediately.[125] As a result, we are unable to rely upon the Company's analyses to calculate prudence damages.

The evidence also demonstrates that a prudent mix of resources could have included some resources from New York.[126] However, it would have been reasonable for GMP to conclude there was not adequate transmission capacity to meet *all* its needs with those resources. As we found in Docket 5983, sufficient capacity existed so that a prudent supply portfolio

122. Docket 5983, Order of 2/27/98 at 236.

123. GMP asserts that because this Board reviewed or approved the amount and timing of GMP's HQ-VJO Contract purchase in several dockets, it is appropriate to only examine alternate portfolios that mirror the Contract. We conclude this argument has no merit. In Docket 5330-A, GMP is correct that the Board considered that allocation of HQ-VJO Contract power, finding GMP's allocation of 114 MW reasonable. However, as we previously observed, the hearings in that proceeding were held prior to the demand and market changes that GMP failed to consider when the Company decided to lock-in early. GMP did not inform the Board of the material market and demand changes subsequent to the hearings, so the Board's decision could not have considered what would have been a reasonable allocation in light of these changes. *See* Docket 5983, Order of 2/27/98 at 16. Similarly, the Board's review of GMP's IRP in Docket 5270-GMP-4 did not consider the reasonableness of the 114 MW purchase or what amounts GMP should have purchased as GMP had already committed to the HQ-VJO Contract power purchase. *Id*. at 16–18.

124. GMP could, for example, have considered the effect of a 50 MW reduction in IBM's short-term demand. Docket 5983, Order of 2/27/98 at 194–195.

125. We note that the Department and IBM criticized GMP's analysis extensively and persuasively. *See*, for example, Rosenberg sur. pf. at 45–49 and Steinhurst sur. pf. at 8–13. Given that we have concluded we cannot rely upon the Company's analysis, it is not necessary to address each of their other criticisms.

126. We are not persuaded by GMP's assertions that such resources did not exist. GMP's assertions can be found at Oliver reb. pf. at 52–54 and 56–58; tr. 11/22/00 at 63–64 and 119–120 (Oliver); James reb. pf. at 12–15, 17, 19; Parmelee reb. pf. at 9–13.

analysis should have included some New York sources.[127] However, we recognize that some constraints on that capacity existed so that a prudent planner — at that time — would reasonably have had concerns about meaningful limits on desired capacity for transmission from New York.[128] Because IBM assumed that all necessary amounts of power from lower-cost New York resources could have been delivered to IBM's service territory,[129] we are unable to rely upon IBM's portfolio analysis to calculate prudence damages.[130]

We find that a prudent mix of resources could have been purchased in 1991–1992 that, in aggregate, would have cost GMP between three and five-and-a-half cents per kWh from 1992 until the mid-2000's.[131] In addition, we find it is likely that Installed Capacity (or a replacement product) will cost between \$1.50/kW-mo. and \$1.85/kW-mo. during the early 2000's.[132] These prices represent a reasonable proxy for the cost of a prudent portfolio during the period 2000–2004. Incorporating these prices (adjusted to year-2001 dollars using the Department's discount factors shown on exh. IBM-Reb-20) into the Department's recommended prudence damage calculation methodology for this time period[133] (which we find reasonable) results in a

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127. Docket 5983, Order of 2/27/98 at 236-237.

128. We note that GMP was entitled to between 42 and 53 MW of transfer capacity between New York and New England during the early 1990s. In 1991, GMP was using almost all of this entitlement for a purchase from Rochester Gas and Electric, but that arrangement was planned to ramp down in 1994 and to expire completely in 1995, thereby freeing the transmission capacity by the time GMP's Schedule B and C HQ-VJO Contract purchases began. *See* Findings 43 and 44 above.

129. Rosenberg pf. at 33.

130. We note that IBM also asserted that GMP could have purchased only Schedule B power from Hydro-Québec, thereby reducing its HQ-VJO Contract power costs by more than 20 percent. IBM Brief at 48–49. There is no evidence that Hydro-Québec would have agreed to such a contract, and therefore we do not rely upon this assertion in making our decision.

131. *See* Finding 36, above.

132. *See* Finding 39, above.

133. This methodology is described above at page 40.

range of prudence damages between approximately $8.7 million[134] and $26.6 million[135] in 2001.[136] We find this range to be reasonable, except that, if applied, it would be adjusted downward to account for the HQ-VJO Contract's environmental benefits.

In Docket 5983, this Board found that the value of a resource's environmental benefits should be included in any calculation of prudence (and used-and-useful) damages.[137] We continue to believe that it is appropriate to do so.[138] We also find, as this Board did in Docket

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134. A straight mathematical calculation of (5.5 cents/kWh times 700,115,000 kWh) plus ($1.85/kW-mo. times 12 months times 114,000 kW) yields $43.5 million for the cost of a prudent portfolio in 2001. Exh. IBM-Reb-20 shows GMP's expected costs under the HQ-VJO Contract to be $49.7 million. (The exhibit actually shows year 2001 costs discounted to year 2000 dollars. To convert year 2000 dollars to year 2001 dollars, divide $46.2 million by the discount factor shown of 0.930). The difference between the cost of a prudent portfolio and GMP's costs under the HQ-VJO Contract is approximately $8.7 million. This calculation assumes an energy price of 5.5 cents/kWh and an Installed Capacity price of $1.85/kW-mo.

135. This is the same straight mathematical calculation as in footnote 134, except that this calculation assumes an energy price of 3 cents/kWh and an Installed Capacity price of $1.50/kW-mo. In addition, the energy price is multiplied by 750,123,000 kWh, as shown on exh. IBM-Reb-20.

136. A similar methodology would indicate a range of approximately $30.7 million to $74.2 million (net present value) for 2002–2004. However, we are not persuaded that the evidence allows any reasonable certainty about comparative costs in the years beyond 2004.

137. "[U]tilities acquiring supply resources may need to pay above the lowest short-term price in order to capture non-price values, such as flexibility, contractual and physical reliability, *environmental benefits*, and counter-cyclical price stability. These are all legitimate objectives, consistent with Vermont law and policy, and they should be reflected in our analysis of the power cost adjustment." Docket 5983, Order of 2/27/98 at 249–250. Emphasis added.

Similarly, in Docket 5132, we stated:

> Our 'used and useful' analysis also takes into account the usefulness of the investment to utility ratepayers. We are aware, of course, that utility investments may have unquantifiable as well as quantifiable benefits. For example, as noted above, an investment may provide exploratory, research, or option values to ratepayers. Some investments may minimize environmental impacts, thus providing indirect economic benefits to ratepayers.

Docket 5132, Order of 5/15/87 at 163 (footnote omitted).

138. The Department asserts that the HQ-VJO Contract did not have any environmental benefits because (1) if the HQ-VJO Contract had been cancelled, GMP would have implemented more demand-side management programs which have environmental benefits when compared with any supply source; and (2) regardless of what resource GMP purchased in the early 1990's, the actual operation of plants within the region would not have changed (and therefore the actual emissions produced within the region would not have changed) because of the way Hydro-Québec, NEPOOL, and the New York Power Pool dispatched their units until last year. Tr. 12/1/00 at 76–77 and 80–81 (Steinhurst). We do not find these arguments persuasive because (1) GMP could not have replaced all its HQ-VJO Contract power with energy efficiency programs, therefore it still would have needed to acquire some supply-side resources (which would have had fewer environmental benefits than the Contract) (*See* Docket 5330, Order of 10/12/90 at 170; and (2) when evaluating the prudence of a utility's actions, one examines what a reasonable utility would have done at the time, and under this Board's previous orders, a reasonable utility would have considered the Contract's environmental benefits at the time it decided the resources to purchase.

5330, that the HQ-VJO Contract has environmental benefits relative to other supply sources available at the time. As this Board stated, in Docket 5330:

> [the HQ-VJO] Contract is, compared with other available choices, an environmentally attractive supply source for Vermont. . . . The power supplied under this Contract will be supplied overwhelmingly by hydroelectric facilities . . . reliance on this renewable source of energy will displace power that would, almost certainly, come from fossil-fired or nuclear-powered units, which impose environmental risks and harms of regional and global concern.[139]
>
> . . .
>
> Under the most likely scenarios . . . hydroelectricity from Quebec has the least environmental cost of all feasible supply options.[140]

We are unable, based on the evidence in the current record, to quantify the allocation of those benefits to GMP as a sub-allottee of the HQ-VJO Contract, or to the Contract's remaining time period; however, it is clear that they are material. As a result, we cannot determine whether either of GMP's proposed environmental adjustments[141] correctly accounts for the HQ-VJO Contract's environmental benefits. Therefore, we conclude that any calculation of prudence damages should include an adjustment for the Contract's environmental benefits, but we need not, in this case, specify an appropriate method for doing so since it would not affect our overall decision.

GMP contends that any prudence damages should be adjusted by the same 10 percent risk reduction credit that this Board assigned to demand-side resources in Docket 5270.[142] We do not agree. We recognize that since the HQ-VJO Contract's prices are indexed to inflation rather than fossil fuel prices, the Contract protects GMP's ratepayers from volatile fossil fuel prices. Furthermore, we note that this protection against the volatility of fossil fuel prices was a

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139. Docket 5330, Order of 10/12/90 at 8–9.

140. *Id*. at 170.

141. GMP's two proposed adjustments are a 5 percent credit for environmental benefits (the same as the Board-approved environmental adjustment for demand-side management resources), and a series of adders adopted by the Massachusetts Department of Public Utilities, but never adopted here in Vermont (and actively opposed by GMP in the past). Oliver reb. pf. at 4, 10, 62, 85.

142. GMP argues that it would be appropriate to apply a 10 percent credit for risk reduction to the HQ-VJO Contract in order to account for the Contract's price stability benefits. Oliver reb. pf. at 85–87.

significant benefit attributed to the Contract at the time this Board originally reviewed it in Docket 5330:

> An additional significant price advantage of the Contract lies in the fact that its future prices are indexed to broad national inflation trends, rather than to the fossil fuel price indices that are more common in large power contracts. The first benefit of this is that Vermonters will face relatively stable pricing shifts and will be shielded from the extreme volatility of fossil fuel markets.[143]

However, this price stability is not comparable with the risk benefits that might be derived from prudently-managed demand-side management resources.[144] As this Board stated in Docket 5270, "the risk-related advantages of energy efficiency resources are . . . flexibility, short lead time, availability in small increments, and ability to grow with load."[145] Collectively, these attributes allow energy efficiency resources to more closely match (relative to supply alternatives) resource acquisition with resource needs.[146] The HQ-VJO Contract does not possess these attributes. In fact, quite the opposite holds true.[147] Therefore, it would be inappropriate to apply the same risk adjustment to the HQ-VJO Contract that this Board does to energy efficiency resources.

We are unable to determine a range of prudence damages for the period 2005–2015. If GMP had not locked-in early to the HQ-VJO Contract, it is likely the Company would have entered into at least one intermediate-term power contract that expired around 2005; however, we do not accept the Department's argument that GMP would necessarily have been fortunate enough to choose contracts that would *all* have expired at the low point in recent and future price cycles. If GMP had acted prudently, the Company would have purchased a mix of resources with different effective periods, only some of which would be ending in the next few years. Nevertheless, if GMP had purchased even one intermediate-term power contract that expired around 2005, it would now be planning to replace that resource, and would likely do so with

143. Docket 5330, Order of 10/12/90 at 24–25.

144. Instead, the HQ-VJO Contract more closely resembles the stability that is not available from the spot market, but that is attributable to an owned facility, such as the proxy new combined-cycle generation units postulated by the Department, or to a hedging arrangement.

145. Docket 5270, Order of 4/16/90, Vol. IV at 10.

146. *Id*., Vol. III at 110.

147. Tr. 12/01/00 at 32–33 (Steinhurst).

purchases from new baseload gas-fired combined-cycle generation units at prices roughly equivalent to current spot and forward market prices. Therefore, we conclude that, beginning in 2005, forward market prices are an appropriate proxy for some, but not all, of a prudent replacement portfolio for GMP's HQ-VJO Contract entitlement. The Department's market price forecast is one of many reasonable estimates of market prices for this time period.[148] Thus, overall, we find that the Department's prudence damages methodology for the period 2005–2015 provides a useful estimate of prudence damages for that (undefinable) portion of the HQ-VJO Contract which GMP would be replacing in 2005, but does not provide a useful estimate for the remaining portion of the Contract.[149]

In summary, we are unable, based upon the evidence presented in this Docket, to determine exactly what GMP's power supply costs would have been in 2001 and beyond if the Company had acted prudently in 1991–1992 and not locked-in early to the HQ-VJO Contract. We are able to determine that in 2001, GMP's power purchase costs under the HQ-VJO Contract are likely to exceed the cost of a prudently-acquired alternative portfolio by between approximately $8.7 million and $26.6 million, less an appropriate adjustment for the Contract's environmental benefits.[150] Therefore, if we were to use traditional cost-of-service methodologies to apply a prudence disallowance in this Docket, the amount of the disallowance would be within this range, after it is adjusted downward to account for the Contract's environmental benefits.

We are unable to determine the prudence damages over the remaining life of the HQ-VJO Contract. What we *can* determine, however, is that even a disallowance at the low end of this

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148. The Department asserts its forecast reflects the "all-in cost" of new gas combined-cycle capacity, substantial amounts of which it predicts will begin operation in 2003. Tr. 12/1/00 at 55–56 (Steinhurst). We understand this to mean that the Department's forecast includes the price for energy plus any associated required capacity products (whether this is Installed Capacity, as currently defined, or some replacement product).

149. Following the Department's recommendations for this time period (which include no adjustment for Installed Capacity or a replacement product) would result in prudence damages of approximately $62 million present value. When added to the earlier calculation of the prudence damages for the 2001–2004 time period (*see* Finding 34 and Footnote 136, above), this results in prudence damages between approximately $101 million and $163 million present value. For reasons set out above, we believe this significantly overstates the relevant damages.

150. A similar methodology would indicate a range of approximately $30.7 million to $74.2 million (net present value), less an appropriate adjustment for the Contract's environmental benefits, for the period 2002–2004.

range would clearly put a significant strain upon GMP's financial viability, given the Company's current financial situation.

2. Used-and-Usefulness

a. GMP's Recommended Approach

GMP argues, as it did in Docket 5983, that this Board should not apply an economic used-and-useful test to the HQ-VJO Contract. This Board considered the question of whether to employ an economic used-and-useful test in Docket 5983, including the specific issue GMP now raises as to whether such a standard should apply to purchased power contracts. At that time, this Board rejected GMP's arguments, stating that "appropriate application of the used-and-useful standard to non-investment expenditures does not create a new set of asymmetric risks for which the company's shareholders have not been compensated."[151] This Board's application of the used-and-useful standard to the HQ-VJO Contract was based upon long-standing practices in Vermont and elsewhere.[152] This Board has fully considered those issues previously. And as we ruled earlier in this docket, the issue of whether the Contract is used-and-useful is now decided and not subject to relitigation in this docket.[153] The issue remaining before us is the calculation of the amount of the used-and-useful disallowance.

GMP argues that proper application of the used-and-useful doctrine would produce no rate disallowance. According to GMP, this is because "it would be uneconomic for GMP to replace its HQ power entitlements with another power source."[154] This result stems from the

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151. Docket 5983, Order of 2/27/98 at 247.

152. "A long-standing principle of regulatory law has been that an investment must be 'used and useful' for the provision of public service before the public should be asked to bear its cost." Docket 5132, Order of 5/15/87 at 129 (footnote omitted).

Jersey Central Power and Light Co. v. FERC, 810 F.2d 1168 (D.C.Cir. 1987). Other state commissions have reached similar conclusions. *See, e.g.*, *In the Matter of the Application of Interstate Power Company for Authority to Increase its Rates for Electric Service in the State of Minnesota*, Docket No. E-001/GR-95-601, Minn. P.U.C. (June 26, 1996); *Re Section 712 of the Energy Policy Act of 1992*, Case No. 2512, N.M.P.U.C. (October 7, 1993).

153. Specifically, in ruling on a Motion to Strike filed by IBM, this Board specifically stated that the legal standards for prudence and used-and-usefulness had been established and were not subject to relitigation. Order of 10/13/98 at 2. In addition, we stated that the evaluation of the used-and-usefulness itself was precluded. *Id.* at 3.

154. GMP Brief on Prudence and Used and Useful Issues at 52.

assertion that GMP would have to pay costs both to replace the power now provided under the HQ-VJO Contract and to dispose of the Contract.[155]

We do not agree. GMP's asserted method of valuation is inconsistent with prior rulings of this Board. It is virtually impossible to envision a situation in which GMP's methodology could produce any disallowance; thus application of the methodology would effectively obliterate the economic used-and-useful test as applied to any investment or purchase actually in service.

As this Board stated in Docket 5983, an investment or purchase decision is not used-and-useful "when it is not expected to yield net present value benefits, after consideration of non-price benefits, over its lifetime."[156] In the case of the HQ-VJO Contract, the evidence demonstrated that the Contract was uneconomic over its life using a wide range of possible scenarios, and was thus not used-and-useful.[157] This Board also found that traditionally, it had excluded some portion of the uneconomic costs of investments or purchases that were not used-and-useful. Thus, in reviewing Central Vermont Public Service Corporation's ("CVPS") Seabrook investments, which this Board found not to be used-and-useful, the disallowance was based on the amount of the investment that exceeded the market price (after first adjusting for CVPS's imprudence).[158] Similarly, in Dockets 5630/5631/5632, this Board determined that the portion of Vermont Electric Cooperative's investment in the North Hartland project that exceeded the market value of the investment represented the non-used-and-useful portion of the investment.[159]

These precedents make clear that the measure of the disallowance when an investment or purchase is found to be not used-and-useful is the difference between the market value of that investment or purchase and its actual price. GMP's proposed methodology is thus inconsistent with past practices.

GMP's proposed calculation methodology has other flaws. GMP argues that the disallowance should be adjusted by the cost of disposing of, and then replacing, the non-used-

155. *See* Kessler reb. pf. at 29–40.

156. Docket 5983, Order of 2/27/98 at 245.

157. *Id*. at 247.

158. Docket 5132, Order of 5/15/87 at 129–130; *See also* Docket 5983, Order of 2/27/98 at 252–253; Docket 5854, Order of 12/30/96 at 65–69.

159. Docket 5630/5631/632, Order of 12/30/93 at 58.

and-useful contract. In other words, GMP would credit shareholders with an "offset" against the disallowance, based on the hypothetical transaction costs and replacement costs of a theoretical sale and replacement that need not ever occur. In essence, this methodology seems to rest upon the assumption that a determination that the HQ-VJO Contract is not economically useful requires GMP to now sell that Contract and replace the power. This is not correct. Disallowance of a portion of the HQ-VJO Contract in no way voids that Contract or requires GMP to obtain additional power to serve customers. GMP may continue to serve its customers using power from Hydro-Québec or, if more cost-effective, from another source. Rather, as this Board has explained previously (and need not repeat at length here), the used-and-useful test serves as a safeguard so that ratepayers do not pay for expenditures for which they receive no discernable benefit (which would, based upon past precedent, apply to the non-economic portion of the HQ-VJO Contract).[160] Thus, it is not appropriate to assume disposition of the HQ-VJO Contract, and its replacement with other power, in calculating the disallowance for used-and-usefulness.

<u>b. Department's and IBM's Recommended Approaches</u>

<u>Findings</u>

48. The Department's market price forecast is one reasonable estimate of market prices from 2003–2015. Tr. 12/1/00 at 55 (Steinhurst).

49. A reasonable estimate of the HQ-VJO Contract's uneconomic costs is between approximately $6.2 million and $6.7 million for the single calendar year 2001. This range should be adjusted to account for the Contract's environmental benefits. Exh. GMP-Reb-31; tr. 12/1/00 at 72–73 (Steinhurst); Docket 5983, Order of 2/27/98 at 241.

50. For the period from 2001 to 2015, the uneconomic costs associated with GMP's share of the HQ-VJO Contract are likely to be less than, approximately, $106 million on a net present value basis. This range should be adjusted to account for the Contract's environmental benefits. In addition, the upper end of that range is likely only if the year 2000 wholesale power costs drop

160. *See Jersey Central Power and Light Co. vs. FERC*, 810 F.2d 1168, 1189–1191 (D.C.Cir. 1987).

to significantly lower levels by 2003. Exh. IBM-Reb-20; exh. GMP-Reb-31; tr. 12/1/00 at 72–73 (Steinhurst); Docket 5983, Order of 2/27/98 at 241.

51. It is reasonable to use the following methodology to calculate a used-and-useful disallowance associated with the HQ-VJO Contract: (1) reduce the costs of the HQ-VJO Contract by the amount of any imprudence disallowance adopted in this case; and (2) allocate any remaining above-market costs between customers and shareholders on an equal 50/50 basis. Docket 5983, Order of 2/27/98 at 254; Docket 5132, Order of 5/15/87 at 4–5.

52. If none of the HQ-VJO Contract's imprudent costs were disallowed, a reasonable used-and-useful disallowance of HQ-VJO Contract costs for the year 2001 would be between approximately $3.1 million and $3.3 million, less an appropriate adjustment to reflect the Contract's environmental benefits. Findings 49 and 51, above.

53. If none of the HQ-VJO Contract's imprudent costs were disallowed, a reasonable used-and-useful disallowance of HQ-VJO Contract costs over the Contract's remaining term is likely to be less than approximately $53 million on a net present value basis, less an appropriate adjustment to reflect the Contract's environmental benefits. This amount could be significantly less if alternative power costs are less than the Department's predictions. However, even 50 percent of any reasonable estimate of the net present value of such uneconomic costs would still be several million dollars. Findings 50 and 51, above.

Discussion

The Department, IBM and AARP assert that GMP's Hydro-Québec purchase remains uneconomic. According to the Department, the price of the HQ-VJO Contract power will exceed the wholesale market price for each of the remaining years of the Contract, resulting in uneconomic costs of approximately $100 million (net present value) over the period 2000 through 2015.[161] IBM relies upon the Department's analysis to conclude that the uneconomic portion of GMP's HQ-VJO Contract costs is approximately $24 million annually from 2001

161. Steinhurst sur. pf. at 7; exh. IBM-Reb-20.

through 2015, or approximately $103 million net present value.[162] AARP agrees with IBM's position on this issue.[163]

The Department developed its assessment of the uneconomic costs associated with GMP's share of the HQ-VJO Contract, by comparing its estimates of GMP's costs under the Contract with its forecast of the wholesale market price in 2000–2015 for a resource having the same capacity factor as GMP's entitlement under the HQ-VJO Contract.[164] GMP criticized the Department's market price forecast because it did not appear to reflect recently observed increases in spot prices or anticipated prices for near-term forward contracts, i.e., 2001 and 2002.[165] Upon cross-examination, Department witness Steinhurst acknowledged that given recent market prices, the Department's market estimate for 2001 and 2002 could well be 5 to 10 percent low.[166] However, Mr. Steinhurst asserted that substantial amounts of new gas combined-cycle capacity will be coming on-line starting in 2003, and therefore market prices will return to the levels in the Department's forecast in years 2003 and beyond.[167]

GMP asserted that near-term market prices are even higher than the Department acknowledged, and the Company provided a rough estimate of how much higher they are.[168] GMP provided a bid/ask quotation sheet from a wholesale broker that includes quotes for recent forward contract prices in the NEPOOL market for peak and off-peak energy, capacity, and ancillary services.[169] The Company suggested a method for calculating an estimate of the

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162. IBM Brief at 14; exh. IBM-Reb-20 at 3.

163. AARP Proposal for Decision at 12.

164. This analysis was admitted into evidence as exh. IBM-Reb-20.

165. In its Brief, GMP also criticized the fuel prices underlying the Department's forecast, citing current fuel prices. GMP Brief at 8.

166. Tr. 12/1/00 at 72–73 (Steinhurst).

167. *Id*. at 55 (Steinhurst).

168. GMP submitted a letter from LaCapra Associates to William Deehan, Central Vermont Public Service Corporation (exh. Board-Reb-2, document marked as PSB 1-13), which summarizes recent changes in regional wholesale and retail electricity prices. This letter cites recently reported forward contract prices for on-peak power in calendar year 2001 in New England to be in the vicinity of 6 to 7 cents per kWh. This estimate is consistent with the forward price for on-peak power shown in exh. GMP-Reb-31.

169. This quotation sheet was admitted into evidence as exh. GMP-Reb-31.

composite market price for an HQ "look-alike" based on the quotations shown on this sheet.[170] Using the calculation method described by GMP, the price for replacing Hydro-Québec Contract power in 2001 and 2002 would be $58.50/MWh, and $50.66/MWh (year-2001 dollars),[171] respectively.

We are persuaded that the Department's market price forecast is a reasonable estimate (one of several possible reasonable estimates) of wholesale market prices for the years 2003–2015. However, for the years 2001 and 2002, the recent market price information shown in Exh. GMP-Reb-31 appears to be a more accurate estimate, and should be used when calculating the net present value of the above-market costs of the HQ-VJO Contract.[172] Substituting the 2001 and 2002 market prices shown in exh. GMP-Reb-31 in the Department's calculation of this amount, eliminating any amount for the year 2000 and converting all prices to year-2001 dollars using the Department's factors shown on exh. IBM-Reb-20 (since we are setting rates for the year 2001), results in an estimate of approximately $106 million net present value for the above-market costs of the HQ-VJO Contract.[173] We accept this number as a reasonable upper bound of the Contract's above-market costs over its remaining term.[174] The amount could be materially lower if actual long-term market costs resemble the most recent price data in this record and do not (by 2003) return to lower levels. However, even a high estimate of such a reduction would still lead to measures of uneconomic costs that — even if shared equally

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170. GMP's suggested method was to average the "bid" and "ask" prices from exh. GMP-Reb-31 for the "Cal 01 prices", and apply a weight of 2/3 to the on-peak price and 1/3 to the off-peak price. Tr. 12/1/00 at 198–200 (Dutton). We acknowledge GMP's disclaimer that the quotations on exh. GMP-Reb-31 are illustrative only, and are not actual quotes for the replacement of GMP's HQ-VJO Contract entitlement. GMP Reply Brief at 8.

171. IBM Brief at 15, 17.

172. IBM provided an estimate of GMP's share of the HQ-VJO Contract's uneconomic costs using quotations from exh. GMP-Reb-31 for the years 2001 through 2010, and the Department's forecast for the years 2011 through 2015. IBM Brief at 16–18. We are not persuaded by this analysis. Exh. GMP-Reb-31 did not include both bid and ask prices for all the prices needed to perform this calculation for the years 2004 through 2010, and we find IBM's assumptions regarding the missing numbers to be unsupported by the record.

173. Department witness Steinhurst testified that such a substitution is a straightforward calculation. Tr. 12/1/00 at 72 (Steinhurst).

174. This is an upper bound because the Department's comparison does not take into account the environmental benefits of the HQ-VJO Contract compared to other alternatives. However, as we found on page 44 above, we are unable to quantify the amount of this benefit. As a result, we merely recognize here that the amount of uneconomic costs should be adjusted downward to reflect the Contract's environmental benefits.

between ratepayers and shareholders[175] — would lead to a disallowance incompatible with GMP's financial viability.

Next we turn to the question of what portion of these above-market costs should be disallowed, if this Board were to set rates using traditional cost-of-service methodologies. The Department argues that if this Board does not approve the Third MOU, it should impose an independent "concurrent" used-and-useful disallowance[176] of either (1) a sharing of the above market power costs for the year in question, or (2) a levelized disallowance reflecting the life-of-contract above-market costs.[177] IBM contends that this Board should continue to apply the used-and-useful disallowance in the manner that it was applied in Docket 5983 — it should reduce the costs of the Contract by the amount of the imprudence disallowance adopted by this Board in this case, then allocate any remaining above-market costs between customers and shareholders on an equal 50/50 basis.[178] The Department also advocates this two-step methodology if this Board adopts a prudence disallowance less than the Department recommendation (which is equal to the full amount of the Contract's uneconomic costs).[179] We find it is reasonable to use the two-step methodology this Board used in Docket 5132 (and as one method of arriving at a reasonable used-and-useful disallowance in Docket 5983), and which IBM and the Department support here, to calculate what disallowance could be applied in this Docket, if this Board were to set rates using traditional cost-of-service methodologies.

However, in order to apply this methodology, the Board must first determine the appropriate prudence disallowance, a step we have already concluded we are unable to do based on the evidence in this Docket. Therefore, we are able to determine only a range within which an

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175. The sharing percentages for costs that are not used-and-useful can vary depending on the equities presented. *See, e.g.*, Docket 5132, Order of 5/15/87 at 135, n. 44, 161–162; Docket 5983, Order of 2/27/98 at 253 n. 456.

176. The Department appears to use the word "concurrent" to mean that this Board should apply the prudence and the used-and-useful disallowances independently (in order to ensure that the record maintains a clear and complete precedent on traditional rate-making principles), but instead of the effective disallowance being the sum of the two disallowances, the effective disallowance should be the larger of the two. Department Brief at 63.

177. Using method one, this Board would determine the appropriate disallowance in each future GMP rate case until the HQ-VJO Contract's end; using method two, this Board would determine the amount of the disallowance now for this and all future GMP rate cases until the Contract's expiration. Department Brief at 62–63.

178. IBM Brief at 65.

179. Department Brief at 63.

appropriate used-and-useful disallowance of GMP's HQ-VJO Contract costs would fall. Using the Department's and IBM's methodologies, assuming this Board disallowed none of the Contract's imprudent costs, a reasonable used-and-useful disallowance would range from $3.1 million to approximately $3.3 million[180] (without taking into account the Contract's environmental benefits) in 2001. Over the remaining life of the Contract, a reasonable used-and-useful disallowance could be as high as approximately $53 million[181] (without taking into account the Contract's environmental benefits) if wholesale power costs drop as much as the Department has predicted by 2003.

3. Summary of Potential HQ-VJO Contract Disallowance

As concluded above, we are only able to establish a range within which an appropriate combined prudence and used-and-useful disallowance of GMP's HQ-VJO Contract costs is likely to be for 2001. This range is approximately $8.7 million[182] to $26.6 million[183] (adjusted for environmental benefits) for the year 2001. Because we cannot determine prudence damages over the remaining life of the Contract, we are unable to establish a range within which an appropriate combined prudence and used-and-useful disallowance is likely to be over the period 2001–2015. For the purposes of this Order, we do not need to decide this issue more precisely; as explained in Section IV.C below, a 2001 disallowance of even $8.7 million would result in rates substantially lower than is required to maintain GMP's financial viability.[184] Any material

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180. This is 50 percent of the maximum amount of the Contract's uneconomic costs in 2001, before adjusting for the Contract's environmental benefits.

181. This is 50 percent of the maximum amount of the Contract's uneconomic costs over the remaining term of the Contract, before adjusting for the Contract's environmental benefits.

182. This represents the minimum reasonable prudence disallowance.

183. This represents the maximum reasonable prudence disallowance.

184. Had we determined that we should impose a disallowance, our inability to determine a precise quantification (rather than a reasonable range) would not have precluded us from setting some disallowance, equitably determined within that range of reason. As this Board stated in Docket 5132,

> We have a statutory obligation to ensure that rates are 'just and reasonable.' 30 V.S.A. §118(a). In this context, as in many other areas of law, there are often broad ranges within which any result can reasonably be chosen. The value of good business reputation, an appropriate rate-of-return, the remedy for a breach of contract, the appropriate costs of environmental clean-ups, and compensation for human life itself are all areas where a tribunal must ultimately specify a precise value selected from an inherently broad range of reasonable results.

(continued...)

disallowance of costs as uneconomic would have a similar effect. Having concluded (for the reasons set out in Section IV.D) that such a result is not in the public interest, we will not impose it here.

C. Would a Material Disallowance Lead to a GMP Bankruptcy?

Findings

54. Over the past two years, GMP has cut approximately $5 million from its annual operating expenses through workforce reductions, facility consolidations and other internal re-engineering. Brock reb. pf. at 26–27; tr. 12/01/00 at 183 (Dutton).

55. Negotiated in early 1999, GMP's power supply management contract with Morgan Stanley produces power supply cost savings of approximately $2 million per year. The contract runs until January 31, 2002. Brock reb. pf. at 28–29.

56. GMP's revolving credit facilities include "Material Adverse Change" clauses which allow the Company's lenders to cancel the facilities if they are reasonably dissatisfied with the outcome of this proceeding. In addition, the loan agreements give the lenders the right to invoke the Material Adverse Change clauses in the event of a Statement of Financial Accounting Standards Number 71 ("FAS 71") abandonment and/or a Statement of Financial Accounting Standards Number 5 ("FAS 5") write-off. Tr. 11/20/00 at 75, 88 (Dutton).

57. If the Material Adverse Change clause is used to cancel the Company's existing short-term credit lines prior to their scheduled maturities in June and September of 2001, or as a rationale for not renewing the debt facilities, GMP could not arrange replacement capital in the marketplace. Tr. 11/20/00 at 88 (Dutton).

58. Growth in GMP's service territory will require the Company to make significant infrastructure investments in order to meet its customers' new service needs. Without access to the capital markets on terms and at rates that are reasonable, GMP will not be able to make these investments. Tr. 11/20/00 at 212 (Dutton).

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184. (...continued)
Docket 5132, Order of 5/15/87 at 128–129.

59. FAS 5 is titled Accounting for Contingencies. It requires a company to record a loss and corresponding contingent liability when the loss is deemed to be both probable and reasonably estimable. McKnight reb. pf. at 7.

60. FAS 71 is titled Accounting for the Effects of Certain Types of Regulation. It permits utilities to record current period costs that will be recovered in future rates as regulatory assets, with the related expense deferred to the future period, thus matching the expense and revenue. B. Reed sur. pf. at 3–4.

61. Discontinued application of FAS 71 would result in GMP taking a $26.3 million after-tax writeoff of regulatory assets. A potential FAS 5 write-off could be much larger. In either case, bankruptcy would be a likely result. Brock reb. pf. at 30; tr. 11/21/00 at 45 (Brock).

Discussion

The question before this Board in determining the rates that are just and reasonable for GMP is whether "fairness to ratepayers" requires the application of traditional cost-of-service rate-making methodologies, including an HQ-VJO Contract disallowance, notwithstanding GMP's constrained finances. To answer this question, it is necessary first to determine whether rates established on a cost-of-service basis will produce sufficient revenues to enable GMP to operate and obtain access to financing, or whether those rate levels would, instead, precipitate a GMP bankruptcy. This determination is the focus of this Section. As explained below, we conclude that material cost disallowances would have a high probability of precipitating a bankruptcy filing by GMP or a similar action by its creditors.[185]

GMP and the Department argue that rates established using cost-of-service methodologies will be insufficient to enable GMP to meet its obligations, and will lead inevitably to the Company's bankruptcy. IBM and AARP take the opposite view, stating that adherence to traditional rate-making methodologies will provide GMP sufficient cash flow to meet its

185. We discuss the likely risks and benefits of bankruptcy for GMP, its customers and customers of other Vermont electric utilities in Section IV.D, below.

operating cash requirements (excluding refinancing) in 2001, thereby enabling the Company to avoid filing for bankruptcy.[186]

In Section IV.B above, we find that a reasonable disallowance of the HQ-VJO Contract's imprudent and non-used-and-useful costs for 2001 could range between $8.7 million and $26.6 million (before taking into account the Contract's environmental benefits). If this were the only cost in GMP's original request that we disallowed, the resulting rates would be between 3.57 percent lower and 7.53 percent higher than the rates we established in our Docket 5983 Orders.[187] IBM, AARP, and (originally) the Department, recommended rate levels near the lower end of this range based upon their application of traditional cost-of-service methodologies, with rates between 2.9 percent and approximately 4 percent higher than GMP's current permanent rates.[188] Our examination of the evidence and the cost-of-service analyses suggests that those parties' positions are reasonably reflective of the rates a traditional cost-of-service methodology would produce.

In the following sections, we analyze the effects of such rates, the resulting revenues, and relevant disallowances upon three aspects of GMP's financial condition: (1) cash flow; (2) access to credit and capital; and (3) financial accounting standards. Our analysis with respect to each of these items is explained below.

<u>Cash Flow</u>

GMP's cash flow has been constrained for some time. As far back as November 1998, GMP witnesses referred to the Company's need for additional cash flow to maintain its financial

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186. IBM conditions this assertion upon the adoption of its other recommendations, which include the elimination of GMP's common dividend, and a $3 million reduction in the Company's 2001 capital budget.

187. *See* Docket 5983, Orders of 2/27/98 and 6/8/98.

188. IBM asserts that traditional cost-of-service methodologies would result in a rate increase of 2.9 percent above GMP's current permanent rates (it arrives at that figure by combining its recommended HQ-VJO Contract prudence disallowance with $7.76 million in other adjustments to GMP's power costs, expenses, and rate base). IBM Brief at 78–79. AARP agrees with IBM's recommendations, and also contends GMP's imprudent costs associated with Vermont Yankee should be disallowed, although it did not quantify this disallowance. AARP Post-Hearing Memorandum On Recovery of Imprudent or Uneconomic Costs, at 3. If this Board were to accept the Department's recommended HQ-VJO Contract disallowance and the Supplemental Memorandum of Understanding Regarding GMP's Allowed Costs of Service, GMP's rates for 1999 would be approximately 4 percent above GMP's current permanent rates. Exh. GMP-Reb-5, document marked reb. exh. AJK-1 at 7; Department Brief at 64.

viability. In testimony supporting the first Memorandum of Understanding filed in this Docket, GMP's then-CFO and Treasurer Norse told this Board:

> Based on GMP's cash flow and income forecasts for 1999, GMP will require the full amount of the proposed temporary rate increase [provided for in the first memorandum of understanding in this Docket] to maintain cash flows and interest coverage ratios necessary to provide GMP with the capability to issue first mortgage bonds in an amount equal to GMP's anticipated end-of-year bank loans in calendar 1999.[189]
>
> . . . .
>
> The temporary rate increase [provided for in the first memorandum of understanding in this Docket] is intended to provide GMP with the minimum amount of additional revenues necessary to permit the Company to continue to provide its customers with safe and reliable service through 1999 and to preserve the Company's financial viability during the same period.[190]

GMP has made several major efforts to improve its cash flow (and earnings) situation. First, the Company twice requested, and this Board twice approved, temporary rate increases to meet financial demands. From a longer-term perspective, beginning in 1998 GMP undertook a series of cost cutting measures which reduced the Company's annual operating expenses by approximately $5 million.[191] These measures included cutting its workforce for its core utility operations from approximately 320 to 195,[192] disposing of certain assets, and consolidating facilities.[193] In addition, the Company entered into a power supply management contract that saves GMP approximately $2 million per year.[194]

Despite these efforts — which we greatly commend — GMP's cash flow situation is still weak. In September 2000, the Company provided various year-2001 financial projections that assumed this Board adopted either its original rate request, the Department's original

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189. Norse/Kvedar pf. at 10.

190. *Id*. at 4.

191. To put the magnitude of these cost reductions in perspective, in Docket 5983 the Board disallowed $5.48 million of GMP's 1998 HQ-VJO Contract costs. Docket 5983, Order of 2/27/98 at 266.

192. Exh. GMP-12 at inside cover page; exh. Board-Reb-2 (GMP 1999 Annual Report) at 1. Significantly — very significantly in our opinion — management employees were reduced to a greater proportion than other employees.

193. *See* Finding 54, above.

194. *See* Finding 55, above.

recommendation, IBM's original recommendation, or the Department's position as reflected in the Supplemental Memorandum of Understanding Regarding GMP's Allowed Costs of Service ("Supplemental MOU").[195] These projections (which include the results of the Company's internal cost-cutting efforts), when modified by the additional cash-flow adjustments in the Third MOU, show that an increase of 3.42 percent above current temporary rates is necessary to ensure that the Company's cash inflows will be adequate to meet GMP's expected costs (including debt retirement and dividend payments).[196]

Given the results of these projections, if this Board were to increase revenues to the level specified in the Third MOU, and then subtract even the minimum, yet material, disallowance of imprudent costs ($8.7 million),[197] GMP is likely to experience a cash short-fall. If this Board were to adopt any of the other parties' recommendations, this cash short-fall would be even greater.[198] A cash short-fall of any size would require GMP to rely on outside credit sources to meet its financial obligations; without such access, the Company would likely file for bankruptcy. Thus, we must examine whether GMP could obtain access to debt markets.

<u>Access to Credit and Capital</u>

Currently, GMP has two $15 million lines of credit. They expire in June and September, 2001.[199] As of September 30, 2000, the Company's outstanding balance on these credit lines

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195. Exh. GMP-Reb-3, documents marked as NRB-3 at 10, NRB-4 at 10, NRB-5 at 10, and NRB-6 at 10; exh. GMP-Reb-28, document marked as NRB/AJK 2 at 11. We recognize that the results of these projections are not directly comparable to the results of the parties' current positions since some of the recent projections rely upon reduced expenditures (which reduce the Company's cash outlays) in addition to revenue changes. Nevertheless, we are persuaded that the projections provide useful information for our analysis here.

196. Significantly, to provide a positive cash flow under the Third MOU, GMP agreed to reduce certain expenditures.

197. *See* Finding 34, above, for an estimate of $8.7 million as the lowest reasonable measure of imprudent costs for the period 2001–2002.

198. IBM has acknowledged that its rate recommendation would be insufficient to enable GMP to meet its year 2001 refinancing needs, which total $9.7 million. Gorman sur. pf. at 6. This reflects $9.7 million of debt coming due which the Company must either refinance or pay off. Given that GMP does not have the ability to obtain long-term debt to refinance these bonds, IBM's recommendation that we exclude that debt from the cash flow analysis would be short-sighted and inconsistent with the public interest. *See* Finding 1, above.

199. *See* Finding 9, above.

was approximately $9.6 million;[200] GMP projected that balance to increase to approximately $17.2 million at the end of 2000.[201] Under all of the financial projections discussed in the cash flow section above, GMP projected it would need to access at least one line of credit throughout 2001.[202]

As GMP's cash flow became increasingly constrained over the last two years, the Company's lenders became more concerned about GMP's financial health. Reflecting this concern, the lenders changed the terms on which they would lend GMP money several times. The most recent change included the addition of clauses to the loan agreements that would allow GMP's lenders to cancel the facilities if certain triggering events (Material Adverse Changes) occur.[203] Specifically, the loan agreements give the lenders the right to invoke the Material Adverse Change clauses and declare GMP in default of the agreements if they are "reasonably dissatisfied" with the result of this proceeding.[204] In addition, the lenders may invoke the Material Adverse Change clause in the event of a FAS 5 write-off (such as would occur if the Board disallowed any of GMP's imprudent or non-used-and-useful HQ-VJO Contract costs).[205] Another triggering event is a FAS 71 abandonment (such as might occur if GMP was unable to earn a fair return on its allowed investment over an extended period of time).

It is very likely that if we were to impose a multi-million dollar disallowance because of prudence and used-and-useful criteria, GMP's lenders would invoke the Material Adverse Change clauses and cancel GMP's current lines of credit. If the Company's current credit

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200. *See* Finding 12, above.

201. Exh. GMP-Reb-28, document marked as NRB/AJK 1 at 7.

202. Exh. GMP-Reb-3, documents marked as NRB-3 at 10, NRB-4 at 10, NRB-5 at 10, and NRB-6 at 10.

203. *See* footnote 63 for more information about the changes that have been made to GMP's loan agreement with Fleet Bank since 1997.

204. *See* Finding 56, above.

205. It is important to distinguish between a FAS 5 write-off of one year's disallowed costs and a FAS 5 write-off that includes an acceleration of the disallowance for the remaining term of the Contract into the current year. There is no dispute that if the Board were to disallow certain HQ-VJO Contract costs for 2001, GMP would need to take a FAS 5 write-off of those costs in 2001. There is considerable dispute as to whether such a disallowance would fit the criteria that would require GMP to take a FAS 5 write-off in 2001 of the disallowance for the remaining term of the Contract. Our statement above refers to the first of these write-offs, that is, to the write-off of one year's disallowed costs. We do not reach a conclusion as to whether the imposition of a disallowance of some HQ-VJO Contract costs in this docket would require an accelerated FAS 5 write-off. In particular, given the evidence presented, it is likely that any disallowance we found would be provisional and only applicable to year 2001. *See* page 62, below, for more discussion of FAS 5 issues.

facilities are cancelled, GMP's previous difficulties in arranging short-term financing strongly suggest that the Company would not be able to arrange replacement facilities.[206] This, in turn, would result in an immediate cash crunch for the Company that would be very likely to precipitate a Chapter XI filing. Even if the disallowance did not cause the lenders to immediately cancel the debt facilities, GMP would still need to renew or replace these facilities in June and September, an event that would be unlikely.

Looking beyond GMP's immediate liquidity needs, availability of outside capital remains vital, particularly since the Company will need to refinance approximately $8 million in maturing mortgage notes in each of the next three years, plus $1.94 million in annual sinking fund debt and preferred equity retirements.[207] Moreover, the restoration of GMP's financial health and ability to raise funds from the long-term debt and equity markets is essential if the Company is to stay abreast of the growing demand for electricity in its service territory due to the expanding population and business community (which is particularly noticeable in Chittenden County).[208] Currently GMP does not have access to long-term capital markets. Additional HQ-VJO Contract cost disallowances that further impair GMP's health would likely prevent it from regaining access to these long-term capital markets.[209] This inability to access long-term capital markets will require GMP to refinance its expiring debt with more expensive short-term debt or expend cash to pay off the bondholders. In either event, the additional strain on GMP's short-term cash flow would likely lead to a Chapter XI filing by GMP or its creditors.

Financial Accounting Standards

Imposing an additional disallowance of imprudent and non-used-and-useful HQ-VJO Contract costs raises issues with regard to two financial accounting standards: Statement of Financial Accounting Standards Number 5 (Accounting for Contingencies) and Statement of

206. *See* Finding 57, above.

207. Gorman sur. pf. at 8.

208. Tr. 11/20/00 at 212 (Dutton).

209. *See* Finding 15, above. It is reasonable to assume that the capital markets, as long-term lenders, would have the same concerns as short-term lenders regarding the recovery of GMP's costs associated with the HQ-VJO Contract.

Financial Accounting Standards Number 71 (Accounting for the Effects of Certain Types of Regulation).

FAS 5 requires a company to record a loss and corresponding contingent liability when the loss is deemed to be probable and can be reasonably estimated.[210] In cases where the estimate of the loss is a range, the "reasonably estimated" criterion is satisfied, and, if no value in the range is more likely than any other, the company would accrue the minimum amount. No party disputes that if this Board imposes a disallowance of HQ-VJO Contract costs, GMP will have to write-off the amount of year 2001 costs disallowed. There is a dispute, however, over whether GMP would have to record in 2001 a write-off equal to the disallowance over the remaining years of the HQ-VJO Contract (in other words, accelerate the loss).[211] If this acceleration were required, the write-off could be substantial.[212]

FAS 71 permits utilities to record current period costs that will be recovered in future rates as regulatory assets, with the related expenses deferred to the future period, thus matching the expenses and revenues. This benefits ratepayers by enabling rates to be more stable, avoiding sudden large rate changes due to unusual expenses (such as major storm damage), or expenses whose benefits will extend over a long period of time (such as demand-side management programs).[213] To take advantage of this accounting treatment, FAS 71 requires utilities to demonstrate on an ongoing basis the ability to cover costs, including their costs of capital.[214] Paragraph five of FAS 71 identifies three criteria that must be met by any entity that has regulated operations in order for the entity to apply FAS 71 to its financial statements:

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210. Tr. 11/21/00 at 61 (McKnight).

211. *Id.* at 9–10; tr. 11/30/00 at 16–17 (B. Reed); B. Reed sur. pf. at 12–13.

212. Acceleration would not be required if the disallowance were provisional. *See* Docket 5983, Order of 6/8/98 at 23. At this time, we have not determined the reasonable range for a prudence or used-and-useful disallowance beyond year 2001.

213. For example, this Board is allowing GMP to recover the funds it spent repairing damage resulting from the 1998 ice storm over seven years. The unrecovered balance is recorded on GMP's books as a regulatory asset. Without FAS 71, GMP might have filed for a rate increase to recover those extraordinary costs in the rate year that they occurred, or it would have had to write them off. If GMP were required to abandon FAS 71, accounting standards would require the Company to write-off the unrecovered balance.

214. FAS 71 itself clarifies that the term "costs" as used in paragraph 5 and elsewhere in the statement refers to "allowable costs," not all costs. Allowable costs generally do not include costs which were imprudently incurred since such disallowances are a normal part of the regulatory process and, therefore, anticipated and accepted under FAS 71. B. Reed sur. pf. at 7.

- The enterprise's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers;
- The regulated rates are designed to recover the specific enterprise's costs of providing the regulated services or products; and
- In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the enterprise's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.[215]

These criteria do not mean a utility must earn its allowed return on equity each year, but rather, that over a reasonable period (e.g., three or four years), a utility must show the ability to earn a rate of return equal or near its allowed return on equity.[216] If GMP consistently earned substantially below its allowed return on equity (based upon *allowable* costs, not *all* costs), it could be required to abandon FAS 71. This would result in an after-tax write-off of approximately $26.3 million — the current value of all of GMP's regulatory assets.[217] We recognize that since imprudently incurred and non-used-and-useful HQ-VJO Contract costs are not "allowable" costs, there are reasonable arguments that their non-recovery would not affect the determination of whether GMP had violated FAS 71. We certainly do *not* accept the proposition that disallowance of imprudent or non-used-and-useful costs necessarily conflicts with the FAS 71 definition of cost-of-service recovery. However, there are also strong arguments that GMP's failure to earn a reasonable return on its allowed costs over a sustained period makes termination of FAS 71 treatment increasingly likely.

We recognize that the establishment of a specific disallowance amount or range for the remaining term of the HQ-VJO Contract could require GMP to record an accelerated

215. B. Reed sur. pf. at 5.

216. Exh. GMP-48, document marked as 2nd MOU Amdmt-NRB/AJK-5 at 3. In fact, this Board has long recognized the distinction between short-term earnings reductions and enduring periods. *See* Docket 5132, Order of 7/31/87 at 63.

217. *See* Finding 61, above.

disallowance under FAS 5 in 2001.[218] Similarly, if this Board established rates that would not allow GMP a reasonable opportunity to earn a reasonable return on equity (after factoring out disallowed costs), GMP could be required to discontinue the use of FAS 71. The evidence in the record does not demonstrate that either event would probably occur. Nonetheless, we will consider the possibility that these events could occur because their potential consequences could be severe.

First, GMP would need to revise its capital structure to exclude the amounts of the write-offs from GMP's retained earnings and shareholders' equity. This adjustment would (1) deplete GMP's retained earnings balance, thereby causing GMP to violate its obligation under its First Mortgage Notes to maintain positive retained earnings, and (2) reduce the shareholders' equity account, which was $98.7 million as of 9/30/00,[219] to at most $46.0 million.[220] The resultant total debt to capital ratio for the Company would rise to at least 66.9 percent, which would likely violate the Company's revolving credit facilities (the original Fleet facility required a total debt to capital ratio of no more than 55 percent).[221]

Second, and more significantly, as discussed above, either a FAS 5 write-off or the abandonment of FAS 71 would trigger the Material Adverse Change clauses in GMP's short-term credit facilities, allowing the lenders to revoke the loan facilities.

Conclusion

The evidence demonstrates the establishment of rates using traditional cost-of-service methodologies would adversely affect GMP's already strained cash flow and limit the Company's access to credit and capital. GMP needs higher rates to generate sufficient cash flow to cover its current costs, including reasonable capital budgets to efficiently meet the needs of its rapidly

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218. We are distinguishing here between the FAS 5 write-off of the 2001 disallowed costs that GMP would definitely take, and the accelerated write-off of disallowed costs for the remaining term of the HQ-VJO Contract.

219. Exh. Board-Reb-2, document marked as PSB 1-1g at 3 (GMP September 30, 2000 10-Q).

220. A FAS 71 write-off would reduce the shareholders' equity account by $26.3 million (*see* Finding 61, above). GMP argues that an accelerated FAS 5 write-off would be at least as large, therefore we subtracted an additional $26.3 million to arrive at the $46 million maximum.

221. 8/12/97 Credit Agreement, filed as exh. 4-6-18 to 1997 10-k, part of exh. Board-Reb-2, at section 8.8.

growing user communities. As matters currently stand, without an increase, the Company will run out of available funds to pay its bills.

Today, as in 1998, this Board is concerned with GMP's continued financial viability because the Company's financial instability leads to clear costs and uncertain benefits for its customers. The evidence suggests the foreseeable repercussions of even the minimum reasonable prudence and used-and-useful HQ-VJO Contract disallowance ($8.7 million) would have a high probability of precipitating a filing by GMP or its creditors under the Bankruptcy Code.

D. GMP's Bankruptcy Is Not Desirable for its Ratepayers or Vermont

Findings

62. If GMP were to file for reorganization under Chapter XI of the U.S. Bankruptcy Code, and then become the debtor-in-possession, the Company would retain the ability to make decisions in the ordinary course of business. Tr. 11/27/00 at 88–89 (Miller).

63. Certain administrative and legal fees incurred in a Chapter XI reorganization are tied to the size of the estate being administered. GMP has estimated that the administrative expenses in a bankruptcy proceeding will be at least $5 million, and possibly significantly higher, and many of these costs might be borne by Vermont ratepayers. Miller reb. pf. at 11–12.

64. Utility bankruptcy proceedings often last for years. For example, Public Service of New Hampshire's bankruptcy proceeding lasted two years (and related litigation continued for an additional five years). El Paso Electric's bankruptcy proceeding lasted four years. The bankruptcy of Vermont Electric Cooperative, though *relatively* simple, led to conditions affecting the utility for more than five years. Miller reb. pf. at 11; tr. 11/27/00 at 136–137 (Miller).

65. Customers of electric utilities under bankruptcy protection (i.e., Public Service of New Hampshire, EUA Power, Vermont Electric Cooperative) have not experienced lower service quality or reliability. Rosenberg sur. pf. at 15; Bradford/Silkman sur. pf. at 17–18, 23; tr. 10/28/98 at 98–99 (Ross).

66. After filing for bankruptcy protection, GMP could choose to abrogate the HQ-VJO Contract, subject to approval by the presiding bankruptcy court. Before deciding to abrogate the

Contract, GMP would analyze the costs and savings of abrogation, including such issues as replacement power availability and price, transmission and distribution issues, and other administrative costs. Tr. 11/27/00 at 70 (Miller).

67. If GMP abrogated the HQ-VJO Contract, the Contract would be considered breached as of the minute before a Chapter XI filing. Hydro-Québec could then assert a claim in bankruptcy for breach of contract damages. Such a claim could be for as much as $100 million or more. Tr. 11/27/00 at 74–75 (Miller).

68. It is unknown whether a GMP bankruptcy and reorganization would result in lower electric rates, or whether Hydro-Québec would, as a result of the bankruptcy filing, renegotiate the HQ-VJO Contract. Smith reb. pf. at 9.

69. GMP's rates are below the Vermont state average, and close to the New England regional average. Exh. Board-Reb-2, document marked as PSB 1-13 (LaCapra Associates Report at 1–2).

70. The HQ-VJO Contract and the accompanying Participation Agreement are structured so the remaining entities would have to assume, at Hydro-Québec's option, GMP's power purchase commitments on a pro rata basis should GMP default. Under Schedules B and C3 of the HQ-VJO Contract, GMP is obligated to purchase approximately 34 percent of the total power sold under the Contract, at a cost in 1999 of over $47.9 million. Wies reb. pf. at 7–8.

Discussion

As the previous Section makes clear, given GMP's present financial difficulties and limited ability to access the capital markets, establishing rates using traditional cost-of-service methodologies is likely to precipitate a bankruptcy filing by GMP. As a result, we must consider what implications a Chapter XI bankruptcy proceeding (whether initiated by GMP or its creditors) could be for GMP's ratepayers: would the reasonably expected benefits to GMP and its ratepayers outweigh the possible costs and risks? And more broadly, would a GMP bankruptcy be in the best interest of ratepayers of GMP and other Vermont electric utilities, or, is it in the public interest for this Board to establish higher rates than those generated by application of a traditional cost-of-service methodology, thereby preserving GMP's financial viability?

GMP and the Department, through the Third MOU, essentially take the position that this Board should establish rates to avoid a potential bankruptcy. GMP in particular suggests that a bankruptcy could be long and expensive, and may not produce positive results for GMP or the state as a whole. By contrast, IBM, AARP, VSAA, and VECC paint a more positive picture of bankruptcy, stating that bankruptcy could provide benefits to GMP and its ratepayers and may have no effect on other Vermont utilities. Due to the seriousness and complexity of the bankruptcy process, the parties jointly requested that this Board engage its own bankruptcy expert.[222] In response, this Board retained J. Kennedy & Associates as a consultant on financial issues related to bankruptcy and Judd Associates, Inc., as a consultant on similar legal issues.

Bankruptcy is a legitimate business tool that seeks to balance the rights of a debtor and its creditors, and secondarily its investors, when the debtor is no longer able to meet its financial obligations. The decision to file for bankruptcy is usually a difficult one for the debtor to make, and is often precipitated by a liquidity crisis. In many cases, the debtor simply runs out of money to pay its bills.

Chapter XI of the Federal Bankruptcy Code provides for the reorganization of the debtor, also known as the debtor-in-possession, with the presiding bankruptcy court focused on a fair allocation of value among the parties. The bankruptcy code provides for a strict ranking of claims against the debtor-in-possession.[223] Claims are settled (e.g., paid) in order of their priority, with administrative and secured claims having the highest priority. In the reorganization process, the focus is on the debtor-in-possession and its creditors, and not on the "public interest," per se. At the same time, regulatory authorities exercising the police power of the state, such as this Board, retain jurisdiction to establish rates or otherwise oversee GMP on matters consigned to us by state law. Specifically, although bankruptcy normally provides an "automatic stay," shielding the filing entity from claims, the stay does not apply to "the commencement or

222. The Agreement on Joint Request to Hire Experts that was signed by GMP, IBM, the Department, AARP, and the Vermont Public Interest Research Group was admitted into evidence as exh. GMP-43. That agreement asks this Board to hire experts to advise it on various issues arising from a potential GMP bankruptcy.

223. 11 U.S.C. § 507.

continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power."[224]

Under the Bankruptcy Code, GMP, as the company facing financial distress, has the option to seek protection. Alternatively, GMP's creditors have the right to seek to place the Company in bankruptcy. This Board has no direct authority to preclude either GMP or its creditors from exercising their rights under the Bankruptcy Code, irrespective of the rates we establish in this proceeding.

A number of potential benefits could accrue to GMP and its ratepayers from the bankruptcy process. However, the evidence suggests that the possible benefits of a Chapter XI filing are far from certain. The first cited benefit of bankruptcy is that GMP could generate reduced administrative and operating costs as a result of reorganization. However, GMP has already cut approximately $5 million from its annual operating and administrative costs, primarily through workforce reductions and facility consolidations. Considering the current size of GMP's workforce, it is unlikely that a bankruptcy proceeding could generate significant additional savings.

Next, we consider management matters. Many bankruptcies have resulted in creditor-mandated replacement of management — a benefit when a company's previous management was ineffectual, inept, or worse. GMP's recent restructuring efforts also suggest that such replacement here would not provide the same benefit. As this Order makes clear, GMP's present financial predicament arises from decisions made over a period of time beginning in the late 1980's. However, a large portion of GMP's highest level managers left the Company in or before 1997. More recent cost-cutting efforts have cut in half the number of GMP's remaining managers. In other words, most of the management running GMP during the events that are the root of the current financial difficulties are no longer with the Company. Therefore, it appears little would be gained by further efforts to modify GMP's management.

Third, we consider the argument that a bankruptcy proceeding that produced lower rates could increase the competitiveness of the service areas' businesses, decrease costs of living, and

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224. 11 U.S.C. § 362(b)(4).

lead to an increased demand for goods and services in the local economy.[225] This benefit also appears uncertain. GMP's rates, if set at the level GMP originally requested, would be just above the regional average, and still approximately 10 percent lower than the rates of other Vermont utilities, even without considering either (1) recent major rate increases proposed and expected in other northeastern states or (2) the recent rate increases by certain Vermont utilities currently pending before this Board.[226] This comparison suggests that GMP's rates are not out of line with those in the rest of Vermont and the region as a whole. In the near future, GMP's comparative advantage will be greater as rates rise substantially for *other* New England utilities.[227] A bankruptcy proceeding could consider "comparability" as an equitable factor relevant to reducing GMP's rates significantly below this average.[228]

Finally, various parties have argued that a bankruptcy filing would pressure Hydro-Québec to renegotiate the HQ-VJO Contract or, in the alternative, would provide a vehicle for GMP to lower its purchased power costs by abrogating the HQ-VJO Contract. Certainly, power costs are by far the Company's single largest expense category. The most meaningful reductions depend on avoiding above-market power costs from the HQ-VJO Contract, which alone is responsible for over one-quarter of GMP's total costs. Nonetheless, GMP's limited success to date plus recent changes in Hydro-Québec's sales strategy suggest that renegotiation is unlikely.[229]

Similarly, the benefits of abrogating the HQ-VJO Contract are far from certain, especially in today's highly volatile energy markets. If GMP terminated the HQ-VJO Contract, the Company would need to purchase replacement power. Because regional power supply markets are currently experiencing large price fluctuations, if GMP purchased up to 114 MW of additional power in these markets, the Company could actually incur power costs higher than those under the HQ-VJO Contract. And, the stability now provided by the HQ-VJO Contract would be lost. Alternatively, if GMP sought a long-term arrangement that would provide similar

225. Exh. IBM-Reb-23.

226. Dutton reb. pf. at 35. GMP's present rates, even considering the temporary rate increases, are lower than those of most other Vermont utilities.

227. Exh. Board-Reb-2, document marked as PSB 1-13 (LaCapra Associates Report at 3).

228. Tr. 11/27/00 at 130–131 (Miller).

229. Sedano sur. pf. at 5–6.

price stability, wholesale power sellers might require GMP to pay a premium over the expected market prices during the period to secure that stability.

The benefits of abrogating the HQ-VJO Contract are uncertain for another reason: abrogation of the Contract could greatly enhance Hydro-Québec's role in the bankruptcy process. Under bankruptcy procedures, claims by suppliers are treated as general unsecured claims, and are settled after a debtor's administrative and secured claims, but before any payout is made to equity holders.[230] Given the magnitude of GMP's obligation under the HQ-VJO Contract, if GMP did not meet its Hydro-Québec obligations, Hydro-Québec would likely become GMP's largest unsecured creditor. As such, Hydro-Québec would be positioned to have a powerful voice in negotiating the settlement for all unsecured creditors.[231] It would also be positioned to be a significant influence on GMP's overall reorganization process and outcome. We do not see it as desirable for a major power *supplier/seller* to have such a controlling role in the long-term future of a power *distributor* such as GMP.[232]

Very importantly, too, abrogation of the HQ-VJO Contract could have major adverse affects on most other electric utilities within the state. At the same time GMP entered the HQ-VJO Contract, the Company also signed the Participation Agreement under which GMP and the other VJOs make power purchased under the Contract available to most other utilities in the state. Section 6.3.2 of the Amended Participation Agreement provides that:

> if a Schedule A/B Participant fails to pay for Schedule A/B Power or Transmission Rights related thereto as required hereunder, including any Administration Costs related thereto, then all other Participants will immediately assume such defaulting Participant's obligations under this Agreement pertaining to Schedule A/B Power and Transmission Rights related thereto Pro Rata; if such defaulting Participant fails to cure within 90 days, then the defaulting Participant's rights hereunder with respect to Schedule A/B Power, including its rights to transmission of such power over Existing Delivery Facilities, New Transmission Facilities or New Block-Loading Facilities, will be terminated, and such curing Participants will thereafter permanently assume the obligations and be

230. Tr. 11/27/00 at 74–75 (Miller).

231. *Id*. at 145–146 (Miller).

232. *See Investigation into Restructuring of the Electric Utility Industry in Vermont*, Docket 5854, Order of 12/30/96 at 30–31. Hydro-Québec is both a power distributor (in Canada) and "a major power *supplier/seller*." However, in the context of United States' markets and regulatory structures, its supplier/seller role is dominant.

> entitled to the defaulting Participant's rights to Schedule A/B Power and such transmission facilities under this Agreement Pro Rata without further obligation to such defaulting Participant.[233]

This provision could require other Participation Agreement signatories to purchase substantial amounts of additional power that they presumably do not need and might be unable to sell, except at a loss.[234] The obligation to purchase this additional power creates the real risk that other Vermont utilities will face the same financial distress that GMP now does, with the potential for more bankruptcies.[235]

Abrogation of the HQ-VJO Contract could also have an impact on VELCO. Currently, GMP pays VELCO to transmit power from Hydro-Québec to GMP. This service would be interrupted if GMP abrogated the Contract.[236] Finally, the elimination of power flows from Hydro-Québec to GMP could, in conjunction with other events, diminish the reliability of the Highgate converter, although we do not see this scenario as likely.[237]

Further offsetting the potential benefits of bankruptcy are the known costs. A Chapter XI filing by GMP is likely to be expensive for GMP and other participants, producing a number of direct and indirect costs, including significant administrative and legal costs, extra interest expense, and diversion of management time.[238]

Bankruptcy proceedings are likely to cause GMP and others to expend large financial resources. GMP estimates that its bankruptcy costs would be at least $5 million, and potentially significantly higher. Other participants would also incur costs. In accordance with Chapter XI provisions, administrative expenses are of the highest priority, and thus are settled before other

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233. Exh. GMP-Reb-6 (exh. TNW-2 at 25–26). Section 6.3.3 contains similar language applicable to Schedule C power. In addition, Section 17.3 of the HQ-VJO Contract contains a step-up provision.

234. Wies reb. pf. at 7–8.

235. We recognize that GMP and other signatories to the HQ-VJO Contract and the Participation Agreement may have defenses available that would prevent triggering these step-up provisions. However, the step-up provisions create a serious risk of cascading bankruptcies that we must recognize.

236. On the other hand, GMP would still need power, so it is likely that GMP would purchase replacement power that would be transmitted over VELCO's facilities, thereby generating the same revenues.

237. Wies reb. pf. at 9–10.

238. We note, however, that the extent to which ratepayers will ultimately pay these costs is uncertain.

claims.[239] GMP would have to raise the cash to settle any administrative claims, either internally through operations, or through asset sales, or incurrence of debt. Ratepayers may ultimately pay a major portion of such administrative claims.

With the filing of a Chapter XI petition, the debtor's assets and liabilities are frozen. Accordingly, the debtor-in-possession generally arranges a new outside credit source to fund its day-to-day operations. This special credit funding is known as a debtor-in-possession loan facility. Not all lending institutions provide debtor-in-possession facilities, in part because the level of involvement by the lending financial institution with the borrower is much greater. As a result, the costs to the borrower are higher; typically the facility's interest rate is 100–150 basis points above that of traditional facilities, and its fees are higher as well.[240] Once again, it is possible that ratepayers will pay a major portion of these extra costs.

To the direct costs, can be added indirect costs for GMP. A bankruptcy proceeding would require the devotion of management time that would otherwise be spent on core utility operations. This diversion of management's focus could adversely affect GMP's ratepayers.

The parties raised several additional risks of bankruptcy to which we assign little or no weight. These include:

- deterioration in service quality;[241]
- loss of operating control by existing management;
- loss of key GMP personnel; and
- loss of regulatory oversight.[242]

The evidence suggests that there is little likelihood of further reduction of GMP personnel. Nor is an effect on service quality probable. The bankruptcy code explicitly provides

239. Administrative claims typically arise from the bankruptcy process itself, and would include lawyers fees, consultants and various advisors.

240. Tr. 11/27/00 at 87–88 (Miller).

241. *Id.* at 136–137 (Miller).

242. In general, 11 U.S.C. § 362(b)(4) permits governmental authorities to commence or continue rate-making activities over a utility in bankruptcy, *see Louisiana PSC v. Mabey (In re Cajun Electric Power Coop., Inc.*, 185 F.3d 446 (5th Cir. 1999); *In re: Jal Gas Co.*, 44 B.R. 91 (Bankr. NM 1984); *In re Public Service Company of New Hampshire*, 98 Bankr. 120 (B.R. NH 1989). 11 U.S.C. § 362(b)(4) states: "the filing of a [bankruptcy] petition does not operate as a stay under [the bankruptcy stay provisions] for the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's police and regulatory power."

for continued control of normal day-to-day operations by the debtor-in-possession. Therefore, if management continues to do its job, a GMP bankruptcy should not impair operations. Vermont's own experience with the bankruptcy of Vermont Electric Cooperative indicates that ratepayers experienced no deterioration in service quality during the proceeding.[243]

Similarly, as explained on page 68, above, Section 362(b)(4) of the Bankruptcy Code upholds the rights of regulatory bodies to set rates. In fact, that section preserves this Board's authority over all matters within its jurisdiction. Thus, any provisions in a reorganization plan for GMP that included rate changes or financing would have to be approved by this Board, with this Board having an obligation to protect the public interest.[244]

Conclusions

Although it is possible that a GMP bankruptcy could theoretically provide benefits to GMP's ratepayers, we find these benefits to be very uncertain. The costs to ratepayers and, more importantly, the risks for ratepayers associated with such a bankruptcy outweigh these potential benefits and lead us to conclude that a GMP bankruptcy under these circumstances is not in the public interest. The most significant of these risks is the possibility that a GMP bankruptcy could trigger the step-up provisions in the HQ-VJO Contract and Participation Agreement. That occurrence could, in turn, harm not only GMP's ratepayers, but also ratepayers of other Vermont utilities by creating serious financial difficulties for those electric utilities, including the possibility of bankruptcies for many of them. We recognize that this chain of events is not a certainty, but it presents risks to Vermont's electric ratepayers that can not be ignored. Reinforcing this conclusion is our skepticism that bankruptcy would be an effective way to reduce GMP's above-market power costs associated with long-term purchase power obligations.

Our determination that the risks associated with a GMP bankruptcy outweigh the likely benefits leads us to the conclusion that, in the present circumstances, rates that will not propel

243. *See also* tr. 11/27/00 at 136–137 (Miller).

244. The same is true of a sale of assets or merger arising from bankruptcy, for example.

GMP towards a bankruptcy filing are consistent with "fairness to ratepayers" as part of the overall outcome of the Third MOU and the supplemental elements of this Order.[245]

E. Consideration of the Third Memorandum of Understanding

Given that we have concluded that a GMP bankruptcy under the current circumstances is not in the public interest, we now turn to what is necessary to avoid such a bankruptcy (or at least to create the very strong probability that bankruptcy will be avoided). This includes an analysis of what level of rates is required to sustain the Company's viability. However, this also includes consideration of what additional conditions are appropriate, given that ratepayers will be paying higher rates than they would have under traditional cost-of-service rate-making methodologies.

GMP and the Department have presented this Board with a proposed resolution to this case which they contend will benefit ratepayers by enabling GMP to avoid bankruptcy, restore its financial health, and regain access to long-term capital markets. This proposed resolution, the Third MOU, is a comprehensive bottom-line settlement of all contested issues between GMP and the Department, and is attached to this Order as Appendix C.[246]

IBM, AARP, VECC, and VSAA recommend that this Board reject the Third MOU.[247] These parties argue that it is not in the public interest for ratepayers to pay imprudent or non-

245. *See* Docket 5132, Order of 5/15/87 at 132, fn. 43.

246. Technically, GMP and the Department's proposed resolution of this case is a combination of the Third MOU and the Supplemental MOU. GMP and the Department intended for the Supplemental MOU and the Third MOU to be consistent in their treatment of non-HQ-VJO Contract cost-of-service issues, with the Third MOU being the controlling and superseding document. Tr. 11/29/00 at 188 (Kvedar).

As a practical matter, however, there is only one provision in the Supplemental MOU that is not either included or superseded in the Third MOU. In Paragraph 9 of the Supplemental MOU, GMP and the Department agree that GMP will not accrue AFUDC on CWIP during the period in which the final rates determined in this Docket are in effect. We recognize that this provision is a component of GMP's and the Department's overall settlement of this case, and we find that it is reasonable in that context. This Order does not address the other provisions of the Supplemental MOU; rather, we focus on the Third MOU since its provisions either include or supersede the Supplemental MOU's other provisions.

247. IBM, AARP, VECC, and VSAA have also taken positions on some of the Third MOU's individual provisions. Those positions are described in the discussion of the Third MOU's individual provisions found in Section IV.E.1 below.

used-and-useful costs, even if that results in the Company filing for bankruptcy.[248] IBM is the only one of these parties to make a specific rate recommendation in this case (although AARP has indicated its support for IBM's recommendation); this recommendation is based on traditional cost-of-service methodologies, and excludes all GMP's imprudent and non-used-and-useful costs.

We have already concluded that application of traditional cost-of-service rate-making methodologies to set GMP's rates in this Docket would result in rates insufficient to maintain the Company's financial viability, and this would harm its ratepayers (see Sections IV.B and IV.C of this Order). Therefore, we reject the use of that methodology and instead focus on an evaluation of the Third MOU, including whether it is highly likely to prevent harm to ratepayers by enabling GMP to avoid bankruptcy, as well as whether its individual provisions are fair, just and reasonable under the present circumstances. As detailed below, we conclude that the Third MOU is highly likely to maintain GMP's financial viability (thereby benefitting its customers), and that the Third MOU's individual provisions are appropriate under the present circumstances.

1. Provisions of the Third MOU

The Third MOU is a comprehensive settlement which includes twenty-four provisions. Each of these is discussed below.

a. Final Rates and Recovery of HQ-VJO Contract Costs

Findings

71. The Third MOU, if approved, would result in final rates 3.42 percent higher than the current temporary rate levels, generating an additional $6.1 million in annual revenues. Third MOU at ¶ 5.

72. A rate increase of 3.42 percent is designed to allow GMP to provide quality service to its customers and to achieve cash flows and earnings sufficient for GMP to obtain debt financing. This proposed final rate level, in addition to the current temporary rates becoming permanent, is

248. AARP Proposal for Decision at 1–3; IBM Brief at 12; VECC Brief at 3, 5; and VSAA Reply Brief at 2.

necessary to stabilize GMP's financial condition, and is a move towards restoring the firm's financial viability. Brock/Kvedar reb. pf. 11/16/00 at 2–6 ; Ross sur. pf. at 1–2; Sedano sur. pf. at 11; exh. GMP-Reb-28; tr. 11/20/00 at 211–212 (Dutton); tr. 11/21/00 at 35–38 (Brock).

73. A 3.42 percent increase over current temporary rates will result in just and reasonable rates. Third MOU at ¶ 5; Finding 72, above; Findings in Sections IV.A, IV.B, IV.C, and IV.D, above.

74. Under the terms of the Third MOU,

> GMP shall not, in this or any future proceeding to determine GMP's rates, be subject to any further penalty or disallowance of costs incurred in the purchase of power pursuant to the HQ[-VJO] Contract based on GMP's prudence relating to any act or omission occurring prior to the date of this agreement [November 13, 2000].

Third MOU at ¶ 20.

75. In the Third MOU, GMP and the Department "further agree that GMP's share of the HQ/VJO Contract is used-and-useful." Third MOU at ¶ 20.

76. Resolution of the prudence and used-and-usefulness of GMP's HQ-VJO Contract costs is necessary if GMP is to regain access to the capital markets. Dutton supp. reb. pf. 11/13/00 at 7; Dutton pf. at 32–34; Brock reb. pf. at 15–18, 33–34; Sedano sur. pf. at 10–11; tr. 11/30/00 at 58–59 (Sedano).

Discussion

As we have outlined above in Sections IV.A through IV.D, GMP faces serious financial difficulties, to a considerable extent attributable to its management decisions over the past decade. The Company is presently unable to obtain conventional financing, and in short order must regain access to traditional capital markets to refinance impending debt maturities. Were we to set GMP's rates using a traditional cost-of-service methodology, the resultant rates would not provide the Company any meaningful relief from its present financial predicament, and likely would be insufficient to stave off bankruptcy. Under the present circumstances, we have concluded that the bankruptcy of GMP is to be avoided if possible, given the risks and uncertainties that a bankruptcy would bring to the Company's customers and to the customers of other Vermont electric utilities. As a result of these considerations and conclusions, we have determined that it is in the best interests of GMP, its customers, and the general public to establish rates for the period covered by the Third MOU at a level greater than would be required pursuant to traditional cost-of-service formulae, to generate the amount of revenues necessary to support the Company's continued financial viability and its ability to provide quality service to its customers.

As noted in Section III of this Order, while this Board traditionally sets a utility's rates based on its cost of providing service, that is not the only basis upon which we may set rates. Under Vermont law, this Board is charged with establishing just and reasonable rates, taking into consideration the interests of shareholders and ratepayers. In particular, this Board and other utility commissions around the country have recognized that a utility's financial health is a relevant consideration in setting just and reasonable rates. In appropriate circumstances, rates may be set higher than indicated by a conventional cost-of-service analysis in order to preserve a utility's financial viability. Although a departure from ordinary cost-of-service rate-making *methodology*, such higher rates are consistent with the traditional rate-making *objective* of allowing the utility to "maintain credit and attract capital."[249]

For example, in the previous GMP rate proceeding (Docket 5983), this Board expressly stated that:

> As the parties to this proceeding know, we take the concerns expressed about potential bankruptcy or financial insolvency very seriously. Our goal in the Order was, and is, to fashion a remedy that fairly balances the interests of the Company's shareholders and its ratepayers. To that end, the Order established rates that would permit a positive cash flow, continued profits on regulated utility operations, and the continued provision of reliable service. The evidence presented by the parties demonstrated that the Rate Order would achieve that result and would not create the severe consequences suggested in GMP's initial Motion for Reconsideration.[250]

In a footnote, this Board further noted that:

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249. *Permian Basin Area Rate Cases*, 390 U.S. at 791.

250. Docket 5983, Order of 6/8/98 at 22–23 (footnotes omitted).

> Our concern over GMP's financial situation prompted us to request, at Oral Argument, whether the Company sought additional evidentiary hearings to present evidence on these issues. The Company stated quite clearly that it did not seek to submit additional evidence.[251]

Thus, in Docket 5983, GMP's financial situation was an explicit and prominent factor in this Board's rate determination.

In Docket 5132, this Board expressly noted that the ability of the utility to obtain capital can justify a departure from conventional cost-of-service rate-making methodologies;[252] in that proceeding, this Board weighed the economic health of the utility in determining an appropriate rate level, and consequently limited the disallowance of imprudent Seabrook costs to an amount that would not impair the utility's ability to provide reliable service to its customers.[253]

In Docket 5132, this Board cited with approval a decision of the Maine Public Utilities Commission; in that decision, the Maine PUC allowed rates in excess of those that would result from conventional rate-making methods, in response to a financial crisis in which the utility lacked access to conventional financing and faced the prospect of bankruptcy.[254]

Similarly, the Indiana Utility Regulatory Commission allowed a utility to retain the tax savings from a canceled generation plant, rather than pass those savings on to ratepayers, in order to allow the company to avoid bankruptcy.[255]

Thus, unambiguous precedent in Vermont and elsewhere calls for us to consider carefully GMP's financial plight in setting rates. Our task is to fashion an order that permits the financial survival of the Company — and thus promoting the shareholders' interests as well as those of the ratepayers — while providing the greatest reasonable benefits for ratepayers, who will be paying rates in excess of those that would otherwise be justified on a cost basis. As discussed above in Section IV.C, for GMP to remain a financially viable company, it must regain access to the capital markets, which is precisely what the final rates proposed in the Third MOU are designed to accomplish. We thus conclude that the rates proposed by the Third MOU — representing an

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251. *Id*. at 22, n. 65.
252. Docket 5132, Order of 5/15/87 at 132–133, n. 43.
253. Docket 5132, Order of 5/15/87 at 166; Docket 5132, Order of 7/31/87 at 3.
254. *Re: Maine Public Service Company*, 67 P.U.R.4th 101 (Maine PUC May 10, 1985).
255. *Public Service Company of Indiana*, 72 P.U.R.4th 660, 687–692 (Ind. URC March 7, 1986).

increase of 3.42 percent above the temporary rates currently in effect — represent the rate levels that are reasonably necessary for GMP to regain access to the capital markets.[256] Given the substantial evidence presented of the Company's financial distress and the associated risks to GMP's customers and customers of other Vermont electric utilities, we find that these rate levels are just and reasonable and should be approved.[257]

We are well aware of the concerns of the Company and its auditors regarding the ability to continue to apply the provisions of FAS 71. The permanent rates established by this Order provide for revenues that exceed the level of costs that would be allowable if we had disallowed the excess costs of the HQ-VJO Contract. The requirements of FAS 71 have been not only met, but exceeded. Indeed, GMP informs us that it has consulted its auditors and concluded that the terms of the Third MOU are consistent with the continued application of FAS 71.[258] Thus, there is no valid basis for the Company's discontinuance of FAS 71, and we do not expect the Company to take any discretionary actions to discontinue application of FAS 71 during the period in which the final rates determined in this Docket are in effect.

We now turn to the Third MOU's proposed end to any prudence disallowance for GMP's management of the HQ-VJO Contract as of the date of the Third MOU. The markets are unlikely to provide capital to the Company if it faces the potential for future disallowances based on the prudence of the early lock-in of the HQ-VJO Contract.[259] Because we have concluded that the interests of GMP's ratepayers and the ratepayers of other Vermont electric utilities would be best served if GMP avoids bankruptcy, we thus also conclude that it is appropriate, as proposed in the Third MOU, to declare that there will be no further HQ-VJO Contract disallowances or penalties based on GMP's prudence with respect to any act or omission that occurred prior to November 13, 2000.

As for the provision in the Third MOU that would have us declare the HQ-VJO Contract to be used-and-useful, we conclude that while we are unable to issue that exact declaration, we

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256. *See* Finding 72, above.

257. With this increase, GMP's rates will remain below average among Vermont utilities, and slightly above the regional average. Dutton pf. reb. at 35. While such comparisons by themselves do not establish the fairness of the resulting GMP rates, they are one indication that the rates fall within the range of just and reasonable rates.

258. Brock/Kvedar supp. pf. at 4.

259. *See* Finding 15, above.

can — and do — declare that it is appropriate to treat the HQ-VJO Contract *as if* it were used-and-useful, and that thus we do not impose any used-and-useful disallowance of the HQ-VJO Contract costs.

We are unable to declare the HQ-VJO Contract to be used-and-useful given this Board's conclusion in Docket 5983 that the Contract is not used-and-useful because "it is not expected to yield net present value benefits, after consideration of non-price benefits, over its lifetime,"[260] and given the continuing validity of that conclusion. Although GMP asserts that we can in the current proceeding declare the Contract used-and-useful without overruling this Board's determination in Docket 5983, we do not agree. For the reasons stated in this Board's Orders in that Docket, a power purchase contract that substantially exceeds projected power costs over its lifetime, under a range of expected power cost estimates, is not used-and-useful.

Notwithstanding that the Contract is not used-and-useful, we conclude that it is proper to treat it *as if it were used-and-useful*. As we have noted, in determining rates that are just and reasonable, we are not bound to always follow traditional cost-of-service rate-making methodologies. Consistent with this flexibility in the application of traditional rate-making methodology, this Board expressly recognized a longstanding exception to the used-and-useful principle in its consideration of cost disallowances related to Central Vermont Public Service Corporation's investment in the Seabrook nuclear power project:

> the [used-and-useful] rule need not be stringently applied if a greater recovery is "necessary to ensure efficiency and progress in the art and the continued attraction of capital to the enterprise." Even that exception is limited by the overriding rule that it must not result in unfairness to ratepayers.[261]

We cited one specific application of this exception: an order of the Maine Public Utilities Commission that set rates based "on the calamitous financial condition of the utility, rather than on the appropriate cost of service."[262] With respect to Central Vermont Public Service

260. Docket 5983, Order of 2/27/98 at 245; *see also* Docket 5983, Order of 6/8/98 at 31.

261. Docket 5132, Order of 5/15/87 at 132–133, n. 43 (citations omitted).

262. *Id.*, *citing Maine Public Service Company*, Docket No. 84–80, Order of 5/10/85 (Maine PUC).

Corporation's Seabrook investment, this Board ultimately determined not to apply the full disallowance that a traditional used-and-useful analysis would indicate.[263]

It would likewise be inappropriate, in the current proceeding, to impose any disallowance based on a traditional used-and-useful analysis, given our conclusion that the rate levels proposed in the Third MOU are necessary to allow the continued attraction of capital and GMP's continued financial viability. Thus, for the same reasons that we have concluded there should be no prudence disallowance associated with GMP's premature lock-in of the HQ-VJO Contract, we conclude there should be no used-and-useful disallowance. We thus treat the Contract as if it were used-and-useful.[264]

In sum, under the circumstances here presented, the appropriate balance of ratepayer and shareholder interests, and the ultimate general good of the public, counsel us to take all reasonable steps to provide GMP the opportunity to preserve its financial viability. To do so requires that we forego any prudence or used-and-useful disallowance, and instead establish rates for GMP designed to provide the Company with sufficient cash flow that it may be reasonably expected to retain access to capital. This the Third MOU accomplishes in its provisions establishing rate levels and treatment of HQ-VJO Contract costs.

b. Provisional Rates

Findings

263. Docket 5132, Order of 5/15/87 at 132–134.

264. GMP has cautioned us to exercise great care should we depart from the used-and-useful language of the Third MOU. GMP Brief at 27–28; tr. 12/1/00 at 168–170 (Dutton); Dutton reb. pf. at 36–38; Brock reb. pf. at 33–34. We understand (and share) the concern that the financial markets be sufficiently reassured by our Order regarding the used-and-usefulness of GMP's share of the HQ-VJO Contract. We emphasize that our inability to declare the Contract to *be* used-and-useful is based on the reasons explained above. However, to be clear, we expressly state that our intent in the alternate resolution that we have adopted — to treat the HQ/VJO Contract *as if* it were used-and-useful — is to provide the same level of assurance to the financial community that it would obtain from a declaration that GMP's share of the Contract is in fact used-and-useful.

We also note that, with this modification, the Third MOU remains consistent with the requirements of FAS 71, according to GMP's chief witness on that issue. Tr. 11/21/00 at 72–73, 76–77 (McKnight).

77. On December 11, 1998, this Board approved a temporary rate increase of 5.7 percent or $9.19 million, effective December 15, 1998.[265] Order of 12/11/98.

78. On December 17, 1999, this Board approved a temporary rate increase of 3 percent (applied to the firm rates and the temporary rates then in existence) or $4.5 million, effective bills rendered January 1, 2000. Order of 12/17/99.

79. The temporary rates previously approved result in just and reasonable rates during the period of time in which they were in effect. Third MOU at ¶ 5; Findings in Sections IV.A, IV.B, IV.C, and IV.D, above.

Discussion

Since GMP filed its request for an increase in rates in 1998, this Board has granted two temporary rate increases pursuant to 30 V.S.A. § 226. The first took effect December 15, 1998, increasing GMP's rates by approximately 5.52 percent, with an additional, time-limited surcharge to raise approximately $670,000 in additional revenue to finance estimated 1999 expenditures for remediation of the Pine Street Barge Canal Superfund Site.[266] The second rate increase became effective on January 1, 2000, and increased the initial temporary rates by an additional 3 percent, resulting in a temporary rate surcharge of approximately 8.7 percent from January 1, 2000, to the present.[267] Under Section 226, once this Board determines the rates that are just and reasonable, GMP must issue refunds or credits, with interest, for all amounts collected through temporary rates in excess of those amounts.

In the previous section, we discuss our conclusion that the rates set out in the Third MOU are just and reasonable for 2001–2002. The passage of time since the initial assessment of temporary rates, and our decision to establish rates in this proceeding focused on just and reasonable rates during 2001, however, requires that this Board take the additional step of

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265. This Board also approved a surcharge designed to raise approximately $670,000 to finance expected costs associated with remediation of the Pine Street Barge Canal Superfund Site ("Pine Street"). GMP actually increased its rates by 5.52 percent or $8,918,000. The difference reflects the effect of this Board's Order on Reconsideration in Docket 5983, which increased the Company's net revenues from those used in the Company's filings. *See* Order of 12/17/99 at 2–3.

266. Order of 12/11/98.

267. Order of 12/17/99.

determining the rates that would have been just and reasonable during the periods in which the temporary rates were in effect.

In the Third MOU, the Department and GMP specifically address the treatment of the temporary rates. In Paragraph 5, the Department and GMP agree that the temporary rates should remain in effect through December 31, 2000, and "that such temporary rates will result in just and reasonable rates through December 31, 2000."[268] In their briefs, IBM and AARP take no specific position on the appropriate temporary rate levels. However, as these parties argue that this Board should limit GMP's permanent rate increase to 2.9 percent, IBM and AARP effectively argue that this Board must in some form return to ratepayers the temporary rates collected in excess of this amount (as required by Section 226).

The same reasons that drive our decision to accept the Third MOU and grant GMP the permanent rate increase set out therein, impel us to conclude that the temporary rates produced just and reasonable rates during the period in which they were effective and thus should be effective as final rates for those times. In particular, our decision to accept the Third MOU is not based upon the application of the cost-of-service methodology that this Board traditionally employs in setting rates, but instead relies upon our determination of the rate level necessary to provide GMP with sufficient revenue to permit the Company to provide quality service to customers and obtain access to capital, thus avoiding possible bankruptcy. This same rationale applies to the establishment of final rates during the period in which the temporary rates were effective. Moreover, we note that this Board established the temporary rates based upon the same considerations that drive today's decision: providing adequate cash-flow for GMP to enable the Company to operate and have access to capital.[269] If this Board set lower rates for this period, we would also need to direct GMP to refund or credit significant amounts to its customers, thereby creating the same financial distress our final rate order is intended to relieve

268. At the hearings, counsel for GMP and the Department represented that the Third MOU's signatories intended for the current temporary rates to remain in effect until the new permanent rates took effect January 23, 2001. Counsel for the Department noted that since the new permanent rates will be effective on a bills-rendered basis, that effectively means that the new permanent rates will be in effect for service rendered after January 1, 2001. Tr. 11/30/00 at 118 (Rendall and Volz).

269. Order of 12/11/98 at 8–11; Order of 12/17/99 at 12–14, 17, 19–20.

(more precisely, the final rates do not relieve the financial distress, but place GMP in a position which will permit the Company to operate in a manner that will alleviate that distress).[270]

We, therefore, find that the temporary rates for the periods from December 15, 1998, to the present produced rates that are just and reasonable as final rates for that time period.

c. Write-Down of, and Waiver of Return on, Certain Regulatory Assets[271]

Findings

80. Under Paragraph 7 of the Third MOU, GMP will write down the September 30, 2000, balance in its Deferred State Regulatory Expense account. This balance is approximately $3.2 million. Third MOU at ¶ 7; Dutton supp. pf. at 2–3.

81. Under Paragraph 8 of the Third MOU, GMP will not seek to earn a return on any unamortized deferred costs associated with prosecution of the ice storm arbitration over the remaining term of the HQ-VJO Contract unless the VJOs prevail and the result materially reduces GMP's cost of service. Third MOU at ¶ 8.

82. Under Paragraph 8 of the Third MOU, GMP will forego its return on unamortized balances in its regulatory asset account entitled "HQ ABC", which includes costs associated with the original HQ-VJO Contract approval proceedings. Third MOU at ¶ 8.

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270. The evidence raises a significant likelihood that, if we established final rates during the period of the temporary rates based upon a rigid cost-of-service analysis, those rates would be lower than the temporary rates. For example, this Board's prior determination that GMP's early lock-in to the HQ-VJO Contract was imprudent and that the Contract was not used-and-useful would lead to a large adjustment to GMP's cost-of-service. The Department estimates that the 1999 disallowance for imprudence would be $15,131,872, with a concurrent, independent disallowance of $7,565,936 based on the used-and-useful test. Department Brief at 62.

271. We note that IBM has proposed disallowing $1.59 million of GMP's outside consulting and legal costs in this Docket because (1) but for the imprudence of the HQ-VJO Contract, much of these costs would not have been incurred, (2) these costs are not used or useful to customers; (3) an expenditure of this magnitude is inordinately large, especially for a company the size of GMP; and (4) GMP has not provided any justification for this expense. Rosenberg sur. pf. at 30. This Board does not need to rule on this proposed adjustment because the Third MOU effectively accomplishes it — the disputed costs are included in GMP's Deferred State Regulatory Expense account, the balance of which GMP has agreed to write off as of September 30, 2000.

Discussion

These elements of the Third MOU provide a net present value to ratepayers of between $5 and $6 million.[272]

d. Rate Freeze and Related Provisions

Findings

83. Under Paragraph 12 of the Third MOU, GMP will not file a request for a rate increase prior to April 15, 2002, unless (1) GMP's aggregate projected power costs for twelve months exceed aggregate budgeted twelve-month power costs (as set forth in Attachment D of the Third MOU) by at least $3.75 million, exclusive of changes in load and the associated power cost component of revenues; (2) GMP experiences a significant loss of customer load; or (3) retail choice is implemented. Third MOU at ¶ 12.

84. Under Paragraph 13 of the Third MOU, if there is a major storm, power supply interruption, or outage in excess of forecasted outage rates relating to Vermont Yankee or Hydro-Québec deliveries, GMP may seek emergency rate relief pursuant to 30 V.S.A. § 226(a) or seek an accounting order from this Board permitting the deferral of costs associated with the event. Third MOU at ¶ 13.

85. Under Paragraph 14 of the Third MOU, if GMP's aggregate annual power costs exceed its budgeted power costs for calendar years 2001 or 2002 by more than $2 million, GMP may seek the issuance of an accounting order permitting GMP to book and defer any such excess costs. Third MOU at ¶ 14.

86. The rate freeze benefits customers because it provides rate stability. Sedano sur. pf. at 8; tr. 11/30/00 at 69 (Sedano).

87. It is appropriate for the rate freeze to be conditional. GMP is facing a significant set of uncertainties in its power supply obligations. The opportunity to request a rate increase if GMP's power costs are high enough to threaten the Company's financial viability is appropriate. It is

272. Dutton sup. reb. pf. at 3. We note that the Department and IBM have asserted that the net present value of these provisions is $5 million. Tr. 11/30/00 at 181–182 (Koliander). We do not need to resolve this dispute because the difference does not affect our overall determination regarding the Third MOU.

also reasonable to expect that a rate proceeding might be needed if retail choice is ever implemented in GMP's service territory. Sedano sur. pf. at 10; Steinhurst sur. pf. at 15.

Discussion

Title 30 V.S.A. § 225(a) allows utility companies to propose changes in their tariffed rates at any time. Under Paragraph 12 of the Third MOU, GMP waives this right for two years. Therefore, the rate freeze provided for in Paragraph 12 of the Third MOU will provide rate stability which is a benefit to ratepayers.[273] The Third MOU also establishes certain exceptions to this rate freeze. Given that the overall goal of the Third MOU is to avoid harm to ratepayers by preserving GMP's financial viability, it is appropriate for the Company to be able to file for a rate increase or request an accounting order[274] if its costs increase sufficiently to threaten its financial viability.[275] In addition, since the implementation of retail choice in GMP's service territory would result in fundamental changes to the way GMP is regulated, it is appropriate to allow for a rate proceeding if that occurs. However, we make no judgment here regarding the likely outcome of any such rate proceeding or request for an accounting order.

e. Allowed Rate of Return on Common Equity and Limitation on Earnings

Findings

88. Under Paragraph 19 of the Third MOU, GMP's allowed rate of return on common equity will be 11.25 percent. If the Company's earnings on core utility operations exceed this level in 2001, the excess will be returned to ratepayers through reductions to regulatory asset accounts or

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273. We note that GMP and the Department assert that this provision will result in a benefit to ratepayers of approximately $4.7 million — essentially foregone inflation of 2.8 percent, while IBM argues that this benefit cannot be quantified because it cannot be determined whether GMP would seek a rate increase, how large an increase it would seek, or how much of an increase, if any, would be allowed by this Board. Tr. 12/1/00 at 182–183 (Dutton); IBM Brief at 96–97. We do not need to resolve this dispute because quantification does not affect our overall determination regarding the Third MOU.

274. As the Department pointed out, Paragraphs 13 and 14 allow GMP to request an accounting order, but they do not determine the outcome of that request. In other words, the provisions specifically contemplate future Board review before any additional costs are imposed on ratepayers. Department Brief at 27; tr. 11/30/00 at 81 (Sedano).

275. We note that IBM contends that the exceptions to the rate freeze provided for in Paragraph 12 are so significant, and the contingencies listed in Paragraphs 13 and 14 are so likely to occur, that the rate freeze should not be considered a rate freeze. IBM Brief at 97. We are not persuaded by this argument.

through other means as approved by this Board. Any excess earnings in 2002 or succeeding years will also be returned to ratepayers in a similar manner, unless the Third MOU is superceded by a new Board-approved agreement on rates. Third MOU at ¶ 19.

Discussion

Paragraph 19 of the Third MOU allows GMP to earn an 11.25 percent rate of return on common equity. No party has contested this rate of return. We find this rate of return, which is consistent with our previous rate order, to be reasonable.

Paragraph 19 also limits GMP's earnings during the period that rates established pursuant to the Third MOU are in effect. The Department asserts that this provision will protect ratepayers from the prospect of GMP earning windfall profits.[276] IBM, on the other hand, contends that this provision has "little if any" benefit to consumers because (1) the probability of GMP earning a return on equity in excess of 11.25 percent has not been determined, and (2) if GMP was overearning, a rate case could be instituted to reset the utility's rates.[277] We find that this provision is an appropriate condition and is potentially beneficial to ratepayers because without it, any earnings above 11.25 percent that are earned prior to a filing seeking to reduce the Company's rates would be kept by shareholders.[278]

f. Service Quality Standards

Findings

89. Under Paragraph 22 of the Third MOU, beginning in 2001, GMP will measure and report to this Board and the Department its customer service, safety, and reliability performance as detailed in the Service Quality & Reliability Performance, Monitoring & Reporting Plan which is Attachment G to the Third MOU. The Service Quality & Reliability Performance, Monitoring & Reporting Plan establishes performance measures in seven broad areas of service that have a substantial impact on consumers: call answering, billing, meter reading, work

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276. Sedano sur. pf. at 9; tr. 11/30/00 at 74 (Sedano).

277. IBM Brief at 97.

278. We do not need to quantify the value of this benefit as the quantification does not affect our overall determination regarding the Third MOU.

completion, customer satisfaction, worker safety, and reliability. These performance measures are based in part on performance measures established in other states (California, Connecticut, Idaho, Illinois, Maine, New York, Ohio, Pennsylvania, Texas, Virginia, and Washington), and in part on performance measures established in the telecommunications and cable industries in Vermont. Third MOU at ¶ 22 and Attachment G; Frankel sur. pf. at 6; Frankel supp. sur. pf. at 2.

90. The Service Quality & Reliability Performance, Monitoring & Reporting Plan includes minimum performance standards for some of the performance measures defined in the Service Quality & Reliability Performance, Monitoring & Reporting Plan, and sets out a process for determining the remaining minimum standards. This process includes negotiation between GMP and the Department, and submission of the remaining minimum standards to this Board for approval by March 15, 2001. The Service Quality & Reliability Performance, Monitoring & Reporting Plan shall be in effect for two years following Board approval of the remaining performance standards. Third MOU at Attachment G.

91. Service quality and reliability standards will benefit ratepayers by ensuring that any deterioration in service quality will be readily identified by both the Company and the Department, and remedial measures will be undertaken. Frankel sur. pf. at 2.

Discussion

Section 219 of Title 30 requires electric utilities (and other regulated companies) to "furnish reasonably adequate service, accommodation and facilities to the public." Vermont law gives this Board the authority to set standards regarding this utility obligation. Specifically, 30 V.S.A. § 209(a)(1) gives this Board jurisdiction over "[t]he . . . quality of any product furnished or sold by any company subject to supervision under this chapter," and 30 V.S.A. § 209(a)(3) gives this Board jurisdiction over "[t]he manner of operating and conducting any business subject to supervision under this chapter, so as to be reasonable and expedient, and to promote the safety, convenience and accommodation of the public[.]" Taken together, these statutory provisions establish the basis for service quality and reliability standards by which the adequacy of service can be measured in order to determine whether a company is, in fact, providing "reasonably adequate service" and is operating its business in a "reasonable and expedient" manner that "promotes the safety, convenience, and accommodation of the public."

Paragraph 22 and Attachment G of the Third MOU set out service quality and reliability standards by which GMP's performance will be measured, starting in 2001. The standards cover seven broad areas of customer service (call answering, billing, meter reading, work completion, customer satisfaction, worker safety, and reliability) and include specific indices that will be measured in each area. Attachment G to the Third MOU does not establish baselines for many of these indices (generally because of a lack of historical data or the need to modify existing data collection methods), but it does include a process that will result in the establishment of the remaining baselines.

No party has opposed the establishment of these service quality and reliability standards or the process for establishing the remaining baselines. However, IBM argues that (1) the establishment of these standards has no incremental value to consumers because the reliability standards in the Third MOU are based on Board Rule 4.900;[279] (2) the standards in the Third MOU do not exceed the existing standards; (3) GMP would be required to adhere to the existing standards in the absence of the Third MOU; and (4) there are no consequences to GMP, financial or otherwise, if it does not meet the standards provided.[280]

As a whole, we find that the Service Quality & Reliability Performance, Monitoring & Reporting Plan (Attachment G to the Third MOU) is a solid initial service quality and reliability plan, the first such comprehensive plan for an electric utility in Vermont. We commend GMP and the Department for their work in developing the Service Quality & Reliability Performance, Monitoring & Reporting Plan. We disagree with IBM's contention that the Plan has no incremental value to ratepayers. While we agree with IBM that the reliability standards are those included in Board Rule 4.900, reliability is only one of seven areas in which the Plan sets performance standards. There are no Board rules currently in effect that govern these six other

279. Board Rule 4.900, entitled "Electricity Outage Reporting", requires Vermont electric utilities to keep detailed records of all outages longer than five minutes, and to file annual reliability reports that include certain defined reliability indices with this Board and the Department.

280. IBM Brief at 98–99.

service quality areas, and we believe setting standards in these areas will benefit ratepayers, in part by giving GMP's management clear objectives on which to focus their attention.[281]

In addition, while we agree with IBM that there are no immediate consequences to GMP if the Company fails to meet the standards in the Service Quality & Reliability Performance, Monitoring & Reporting Plan, we note that the Plan explicitly states that GMP agrees to adopt a successor plan which may include financial penalties and/or incentives tied to performance.[282] The Department asserted that the reasons for the lack of financial consequences in the initial Plan were (1) the lack of historical data which could be used to establish realistic baselines, and (2) a penalty structure related to the Service Quality & Reliability Performance, Monitoring & Reporting Plan could create additional financial risk that would conflict with the Third MOU's overall goal of allowing the Company an opportunity to regain its financial stability over the next two years.[283] We find these arguments persuasive; moreover, GMP's agreement to the adoption of a successor plan that may include financial penalties and/or incentives tied to performance is also a benefit to ratepayers.[284]

g. GMP's Future Right-of-Way Maintenance and Capital Expenditures

Findings

92. Under Paragraph 17 of the Third MOU, GMP will spend \$2.88 million on enhanced right-of-way maintenance and pole testing and treatment in 2001. If the amount actually spent in 2001 is less than \$2.88 million, the difference will be applied to reduce a deferral account designated by this Board. GMP will maintain an equivalent per year spending level until its enhanced right-of-way maintenance plan is completely implemented. Third MOU at ¶ 17.

93. Under Paragraph 18 and Attachment E of the Third MOU, GMP commits to capital expenditures of at least \$12.8 million in 2001, at least \$15.4 million in 2002, at least \$15.4 million in 2003, and at least \$14.7 million in 2004. These spending figures represent the

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281. We do not need to quantify the value of this benefit at this time as the quantification does not affect our overall determination regarding the Third MOU.

282. Third MOU, Attachment G at 1.

283. Frankel sur. pf. at 10.

284. We do not need to quantify the value of this benefit at this time as the quantification does not affect our overall determination regarding the Third MOU.

Company's and the Department's assessment of the cost of the various capital projects necessary to maintain or improve GMP's system reliability, safety, and efficiency over the next several years. Third MOU at ¶ 18 and Attachment E; tr. 11/21/00 at 239–240 (Litkovitz).

Discussion

The spending levels set forth in Paragraphs 17 and 18 of the Third MOU are designed to enable GMP to complete capital projects and perform right-of-way maintenance that have been deferred in the last few years because of the financial pressures experienced by the Company.[285] The Department contends these spending levels are appropriate because they will enable those projects necessary to maintain or improve GMP's system reliability, safety, and efficiency, to be completed in a timely manner.[286] In addition, the Department asserts that requiring these spending levels will remove any incentive GMP might have to conserve cash for other purposes.[287] IBM also states that its rate recommendation would allow GMP to spend $12.8 million in 2001, an amount "consistent with" historical, actual expenditures,[288] but it does not explicitly address the right-of-way maintenance spending levels.[289] We find that catching up on deferred right-of-way maintenance and capital projects will improve the reliability, safety, and efficiency of GMP's system. All of these are important to GMP's continued ability to meet its public service obligations, and are benefits to ratepayers,[290] many of whom are concerned about system reliability.[291]

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285. Litkovitz sur. pf. at 6.

286. Tr. 11/21/00 at 238–240 (Litkovitz).

287. Department Brief at 29–32.

288. IBM Brief at 80.

289. IBM also asserts that since GMP is required to maintain an acceptable level of reliability even in the absence of Paragraphs 17 and 18 of the Third MOU, these provisions provide no incremental benefit to ratepayers. IBM Brief at 99. We are not persuaded by this argument.

290. We do not need to quantify the value of this benefit as the quantification does not affect our overall determination regarding the Third MOU.

291. Litkovitz sur. pf. at 2.

h. Discontinuance of the Account Correcting for Efficiency

Findings

94. Under Paragraph 9 of the Third MOU, GMP will discontinue booking, deferring and recovering the Account Correcting for Efficiency ("ACE") for Energy Efficiency Utility core program savings after December 31, 2001. Third MOU at ¶ 9.

Discussion

Under Paragraph 43 of the Docket 5980 Memorandum of Understanding (which was approved by this Board in its 9/30/00 Order in that Docket), GMP will no longer accrue and recover ACE after December 31, 2001.[292] However, Paragraph 43 of the Docket 5980 Memorandum of Understanding explicitly gives GMP the right to request Board approval of a mechanism that would replace ACE and ameliorate any effect on GMP's opportunity to earn its allowed return caused by revenue erosion due to Energy Efficiency Utility core program savings. Therefore, under Paragraph 9 of the Third MOU, GMP is giving up this right to request Board approval of a replacement mechanism. We find that this is a significant benefit to ratepayers, potentially of several million dollars,[293] but do not need to quantify the benefit as the quanitification does not affect our overall determination on the Third MOU.

i. Elimination of Seasonal Rates

Findings

95. Under Paragraph 21 and Attachment F to the Third MOU, GMP will eliminate its seasonal rates beginning with the first billing cycle in April 2001. Any additional revenues received by GMP in 2001 as a result of this rate design change will be deferred and used as income in 2001, 2002, or 2003 for the purpose of assuring that GMP's regulated operations earn the allowed rate of return in each of those years. If at the end of 2003, any additional revenues

292. Docket 5980, Order of 9/30/99 at ¶ 43 on p. A-21.

293. GMP and the Department assert that this will result in a benefit to ratepayers of approximately $6.9 million on a net present value basis, based on anticipated core program expenditures. Dutton sup. reb. pf. at 3; Department Brief at 23. We are not convinced this is the value of this benefit, although we accept that it may be this high.

still exist, the balance will be applied to reduce regulatory asset accounts as approved by this Board. Third MOU at ¶ 21 and Attachment F; tr. 11/30/00 at 186–187 (Koliander).

96. The elimination of seasonal rates will provide ratepayers with improved price signals. Changes in NEPOOL market rules have eliminated the cost justification for the Winter/Summer differential, and ratepayers are no longer receiving appropriate price signals. Koliander sur. pf. at 4.

97. The bill impact of deseasonalization will be moderate (a decrease or an increase of less than 5 percent) for 99.5 percent of customers served under Rate 1 (residential), 96.8 percent of customers served under Rate 6 (small commercial), 98.1 percent of customers served under Rate 11 (time-of-use residential), 98.3 percent of customers served under Rate 61 (large residential time-of-use), and 98.8 percent of customers served under Rate 65 (large industrial). Exh. GMP-Reb-29.

98. No customer class is impacted seriously enough to justify a phased implementation of non-seasonal rates. The bill impacts for those individual customers who are particularly adversely affected by deseasonalization, can be moderated through budget billing or some other mechanism. GMP will work with those customers who are particularly adversely affected to try to lessen the impact of the change. Tr. 11/30/00 at 186–187 (Koliander); tr. 11/29/00 at 184 (Kvedar).

99. Implementing non-seasonal rates with the first billing cycle in April 2001 will cause GMP to collect an estimated $6.6 million more from ratepayers in calendar year 2001 than it would have in the absence of the rate design change. Tr. 11/21/00 at 136–137 (Kvedar).

100. The timing of the elimination of seasonal rates is important to the Third MOU's success in restoring GMP's access to long-term capital markets because the additional revenues that will be collected by the Company in 2001 will be used to assure that GMP's regulated operations earn the allowed rate of return in each of those years. GMP's financial forecasts show that the Company anticipates drawing on some of these revenues in 2002 in order to earn its allowed rate of return. Koliander sur. pf. at 5; Third MOU at ¶ 21; exh. GMP-Reb-28, document marked as NRB/AJK 3 at 2.

101. The additional revenues to be collected by GMP in 2001 will reduce the Company's need to access its lines of credit which will result in an interest savings. Koliander sur. pf. at 5.

Discussion

It is essential for customers to receive accurate price signals regarding the true costs of the utility services they consume; this Board has a long history of establishing rate designs that accomplish this goal. Seasonally differentiated rates were first implemented for GMP in 1981 to reflect the actual higher cost of providing service during the winter months. This cost differential was due primarily to certain rules governing the operation of New England's wholesale power market (in particular, the existence of year-round minimum capacity requirements based mostly on annual peak demand). These market rules have recently been changed in a manner that essentially eliminates the seasonality of GMP's power costs (minimum capacity requirements are no longer based primarily on annual peak demand). As a result, GMP's current seasonally differentiated rates are no longer sending customers accurate price signals regarding the true costs of the utility services they consume, and the elimination of seasonal rates would remedy this situation.

No party has opposed deseasonalization of rates in principle.[294] However, IBM, VECC, and the VSAA have opposed the timing of the rate design change. These three parties assert that deseasonalization should be implemented in a manner that does not allow GMP to collect extra

294. IBM has asserted that GMP's agreement to deseasonalization of its rates is a violation of the first memorandum of understanding in this Docket. Paragraph 9 of that memorandum of understanding states, in relevant part, that "GMP agrees that it will not file any new request to reallocate revenue among its customer classes or to redesign its rates until after this Board issues a final order in GMP's next filed rate case, except as required to do so by law or Board order. In the event the Department seeks Board approval for any change or elimination of winter/summer rate differentials, GMP agrees not to seek reallocation of revenue among its customer classes or rate design changes unrelated to change or elimination of winter/summer rates in any such proceeding."

Paragraph 21 of the Third MOU explicitly states that the Department asked GMP to develop a plan to eliminate GMP's seasonal rates; the first memorandum of understanding clearly reserved the Department's right to request deseasonalization. In addition, the rate design change proposed in the Third MOU does not reallocate revenue among GMP's customer classes, nor does it include any rate design changes unrelated to deseasonalization (a request by GMP to do either of these things would have violated the first memorandum of understanding). Therefore, we find that GMP's agreement to this provision is not a violation of the first memorandum of understanding in this Docket.

revenues in calendar year 2001.[295] IBM recommends that, if this Board determines that seasonal rates should be ended, the rate design change should be effective with service rendered either January 1, 2001, or January 1, 2002.[296] VSAA points out that many businesses, such as Vermont's ski areas, are also struggling to achieve adequate revenues to allow access to capital markets but cannot look to regulatory mechanisms for assistance. It argues that this Board should consider these businesses' needs (that is, utility customers' needs) when it evaluates the fairness of the proposed timing of the rate design change.[297]

While we note IBM's, VECC's, and VSAA's concerns regarding the timing of the rate design implementation, and we recognize that revenue neutral rate design changes are preferred, we find that the April 2001, date for the elimination of GMP's seasonal rates is important to the Third MOU's success in restoring GMP's access to the capital market.[298] Although the design change is *not* revenue neutral on a calendar year 2001 basis, the rate design change as proposed in the Third MOU *is* revenue neutral both on a rate class and on a forward 12-month annual basis, and thus consistent with our rate design policy. In addition, the timing of the rate design change provides benefits to GMP's cash flows that are beneficial in light of GMP's financial situation. GMP's earnings forecast shows that because of the rate freeze in 2001 and 2002 that is provided for under the Third MOU, additional revenues may be needed to ensure GMP's earnings are sufficient to allow access to long-term capital markets. The extra $6.6 million that GMP will collect from ratepayers in 2001 as a result of the rate design change[299] will be used to cover possible contingencies; if the extra revenues are not needed, any funds remaining at the end of 2003 will be applied toward regulatory asset balances and thus will benefit ratepayers. In other words, to the extent the Company can achieve its allowed return without drawing on those revenues, the remainder will be applied toward costs GMP would otherwise seek to recover from ratepayers in the future. Therefore, we find that, when considered as part of the Third MOU's

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295. IBM Brief at 99–100; VECC Brief at 6; VSAA Reply Brief at 1.
296. IBM Brief at 100.
297. VSAA Reply Brief at 1.
298. *See* Finding 100, above.
299. *See* Finding 99, above.

proposed overall resolution to this Docket, the elimination of GMP's seasonal rates in April 2001 is in the public interest.

j. GMP's Future Dividend Level

Findings

102. Under Paragraph 10 of the Third MOU, GMP will not raise its dividend above the current level of $0.55 per share until it has obtained new permanent long-term debt or equity financing to replace all or substantially all of GMP's short- and intermediate-term debt. Third MOU at ¶ 10.

103. Under the Third MOU, forecast earnings are over two dollars per share. If earnings forecasts are met, the $0.55 per share dividend that is provided for in Paragraph 10 of the Third MOU would result in a payout ratio of slightly over "20-odd" percent, significantly below similar utilities' normal payout ratios of 60 to 70 percent. Tr. 12/1/00 at 94–95 (Ross).

Discussion

GMP and the Department support the continued payment of a dividend by GMP.[300] They argue that a further dividend cut, while saving a certain amount of cash in the short term, could result in a further decline in stock price without any meaningful benefit in terms of GMP's access to working capital or long-term debt,[301] and that the continuation of a dividend payment would be a positive factor in discussions with potential lenders.[302] At the same time, the Department asserts that the Third MOU's restriction on the level of the dividend is appropriate because it ensures that revenues in excess of GMP's actual costs are applied to strengthening the Company's balance sheet in a way that restores them to financial health and thereby lowers the Company's borrowing costs which are included in rates.[303]

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300. Maintaining the dividend at a level of $0.55 per share would result in payments to GMP shareholders of approximately $3 million per year. Tr. 11/21/00 at 150 (Kvedar).

301. Dutton reb. pf. at 31.

302. Koliander sur. pf. at 2.

303. Tr. 11/30/00 at 75 (Sedano).

IBM, AARP, VECC, and VSAA oppose the continued payment of a dividend by GMP. IBM and AARP argue that GMP's decision to continue to pay a common dividend is inconsistent with common utility practice,[304] and that the allocation of these funds to reduce debt will reduce the Company's annual interest payments and improve GMP's debt to equity ratio.[305] IBM and AARP also assert that suspension of the common dividend would not preclude GMP from entering the long-term capital market; other utilities have suspended common dividend payments and ultimately were able to access long-term capital markets once dividend payments were reinstated and financial strength improved.[306] VECC contends that continued dividend payments to shareholders at a time when GMP is asking for higher rates is inconsistent with good business practice. In addition, VECC asserts that because GMP's debt securities are already rated below investment grade, there is little financial market credibility left to protect with continued dividend payments.[307] VSAA contends that "it is more equitable and prudent" to require GMP to suspend its dividend before increasing rates for customers who themselves are experiencing financial difficulties and who cannot ask regulators for assistance.[308]

We agree with Department witness Ross's statement that "[i]f the Third MOU is approved and GMP is on the road to making two dollars and some-odd of reported earnings, the paying out of 55 cents is an appropriate payment."[309] Continued payment of a dividend is a current cash outflow. However, continued payment of a dividend that is a relatively low percentage of earnings will benefit ratepayers by helping GMP restore its access to long-term capital markets (which is necessary for ratepayers to avoid the harm associated with a GMP bankruptcy in the long run). At the same time, however, we are conscious of the fact that GMP's historically high dividend payout ratio (until its most recent dividend cut) adversely affected the Company's cash flow and reduced the Company's retained earnings, thereby contributing to GMP's current

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304. IBM Brief at 81.
305. Tr. 11/21/00 at 150–151 (Kvedar).
306. Gorman pf. at 17–18.
307. VECC Brief at 2, 7.
308. VSAA Reply Brief at 2.
309. Tr. 12/01/00 at 96–97 (Ross).

constrained financial condition.[310] Given that an increased dividend would adversely affect the cash flow that this rate increase is intended to improve, we take comfort from GMP's agreement to limit its dividend payments as set out in the Third MOU. Overall, for the reasons set out above, we conclude that the dividend policy laid out in Paragraph 10 of the Third MOU is reasonable.

k. Results of Ice Storm Arbitration

Findings

104. Under Paragraph 11 of the Third MOU, any financial value to GMP resulting from the pending ice storm arbitration will be used to reduce ratepayer expense. Specifically, if any arbitration panel award or settlement relating to GMP's HQ-VJO Contract power supply costs results in the payment of money to GMP, the Company will use the funds to reduce the balances of deferred costs associated with prosecution of the ice storm arbitration, then to reduce balances in other regulatory asset accounts as approved by this Board. If the arbitration panel award causes material reductions to GMP's cost of service, the Company will file a petition with this Board to adjust its rates to reflect the cost reduction. Third MOU at ¶ 11.

Discussion

Given that (1) ratepayers are being asked to pay higher rates than they would under traditional cost-of-service rate-making methodologies because of the magnitude of GMP's imprudent and non-used-and-useful power supply costs related to the HQ-VJO Contract, and (2) the fact that any award GMP receives from the pending ice storm arbitration will serve to reduce its costs associated with the HQ-VJO Contract, it is appropriate for GMP to return any financial value it receives from the ice storm arbitration to ratepayers.[311] Rightfully, this provision of the Third MOU should ensure that ratepayers do not pay costs that GMP does not incur.

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310. *See* Section IV.A.2.b above for an explanation of how we reached this conclusion.

311. Department Commissioner Sedano testified that in the absence of the Third MOU, the Department would argue that ratepayers are entitled to any financial value resulting from the ice storm arbitration. Tr. 11/30/00 at 77 (Sedano). IBM also asserts that ratepayers are entitled to any financial value resulting from the ice storm arbitration. IBM Brief at 98.

l. Withdrawal of GMP's Appeal of this Board's Order in Docket 5983

Findings

105. Under Paragraph 23 of the Third MOU, once there is a non-appealable Board order approving the Third MOU in its entirety, GMP will withdraw its appeal of this Board's Order in Docket 5983 which is pending before the Vermont Supreme Court. Third MOU at ¶ 23.

106. Pursuant to the terms of Paragraph 23 of the Third MOU, when the Third MOU was filed with this Board, GMP and the Department filed with the Vermont Supreme Court a request for a stay of GMP's appeal of Docket 5983 pending a final Board order regarding the Third MOU. Third MOU at ¶ 23.

Discussion

In Docket 5983, the Board established rates for GMP in a manner fully consistent with Vermont law and traditional rate-making policy. We anticipate that the Supreme Court will affirm that decision. However, as with any litigation, there is a possibility, however slight, that the Supreme Court could reach a different conclusion. Removal of this possibility has value to ratepayers,[312] although we need not quantify the value as its quantification does not affect our overall determination regarding the Third MOU.

m. Amortization of Certain Regulatory Asset Account Balances

Findings

107. Under Paragraph 7 of the Third MOU, GMP will continue to amortize its regulatory asset account balances subject to recovery in this case relating to federal regulatory commission expense, tree trimming, storm damage, and the ice storm of 1998, over seven years, beginning January 1999. Third MOU at ¶ 7.

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312. GMP contends that if it were to prevail upon appeal, the Company would be entitled to recover, in rates, an estimated \$16 to \$20 million to compensate shareholders for the Docket 5983 disallowances that underlie the appeal. The Department argues that elimination of the risk associated with the appeal has value, although it does not attempt to quantify the value. IBM asserts that elimination of the risk has no value to ratepayers because it is likely GMP would lose its appeal anyway. Dutton supp. reb. pf. (11/13/00) at 6–7; tr. 11/30/00 at 77 (Sedano); IBM Brief at 98.

108. Under Paragraph 7 of the Third MOU, GMP will amortize deferred state regulatory expenses recorded after September 30, 2000, over a seven-year period beginning the quarter after they are recorded. GMP will not accrue or recover carrying charges on the unamortized balance during 2001 and 2002. Third MOU at ¶ 7.

Discussion

This Board's December 11, 1998, Order in this Docket (which approved a memorandum of understanding among GMP, IBM, and the Department) authorized GMP to amortize its regulatory asset account balances subject to recovery in this case relating to regulatory commission expense, tree trimming, storm damage, and the ice storm of 1998 over seven years, beginning January 1999. The December 11, 1998, Order also explicitly stated that this Board could consider whether this rate-making treatment was still appropriate in its final decision in this proceeding.[313] The Third MOU states that this rate-making treatment should be continued (except for state regulatory expense as described in the following paragraph). We find the continuation of this treatment to be reasonable.[314]

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313. Order of 12/11/98 at 11.

314. We note that IBM has proposed adjustments regarding GMP's treatment of GMP's 1998 ice storm expenses and certain other regulatory assets. Specifically, IBM argues that to be consistent with Board precedent, GMP's costs associated with the 1998 ice storm should be included in GMP's ten-year average storm damage expense that is included in the Company's cost of service, and should not be included in rate base and amortized over five years. Similarly, IBM contends that it is not appropriate for the current balances in the storm damage, tree trimming, and regulatory commission expense accounts to be included in rate base and amortized; rather, the traditional practice of recovering the balances in these accounts through a multi-year historic average expense included in GMP's cost of service should be followed. If adopted by this Board, these two adjustments would reduce GMP's revenue requirement by approximately $1.4 million. IBM Brief at 73–75.

GMP responded that the 1998 ice storm cost the Company more than five times its annual average costs for all storm damage, and it is appropriate for this Board to grant special treatment to costs of this magnitude. Tr. 11/29/00 at 97–99 (Gorman); GMP Reply Brief at 34. In addition, GMP argued that amortization of certain other regulatory assets was necessary to meet this Board's original intent of providing for a fair recovery over time of expenses that varied from year to year because the rolling average mechanism set by this Board for recovery of storm damage, tree trimming, and regulatory commission expense has resulted in a consistent under-recovery of those costs. Kvedar reb. pf. at 10–15.

We are persuaded that the Third MOU's treatment of the Company's costs associated with the 1998 ice storm is appropriate (amortization over seven years). This treatment is similar to that which this Board approved for Citizens Utilities Company's recovery of its costs associated with the same storm (although Citizens Utilities Company will amortize its ice storm costs over five years). Docket 6332, Order of 9/21/00 at 3–4. As this Board stated in that Order, "Storm recovery efforts should be treated as a high priority by electric utilities, and utility managers should be able to expect recovery of prudently-incurred extraordinary costs associated with such natural

(continued...)

With respect to state regulatory expense, the Third MOU provides that the balance in the account as of September 30, 2000, will be written off (see Section IV.E.1.c above), and that expenses recorded after that date will be amortized over seven years. This period is longer than is customary for state regulatory expenses, but the unique nature of this case justifies this special treatment.[315] Because GMP will not accrue or recover carrying charges on the unamortized balance during 2001 and 2002, ratepayers will receive the value of the foregone carrying costs during this period.[316]

n. Pine Street

Findings

109. The Pine Street Barge Canal Superfund Site encompasses approximately 50 acres of land in proximity to Lake Champlain. Between 1895 and 1967, a manufactured gas plant was owned and operated on the site by GMP and other entities. This plant's process wastes have contaminated the soil and groundwater at the site. In 1983 the site was placed on the National Priorities List by the Environmental Protection Agency. As one of many potentially responsible parties, the site remediation costs will be allocated among GMP and others. Docket 5983, Order of 2/27/98 at 66–67.

110. Through 1999, GMP has incurred approximately $22.4 million in costs associated with the Pine Street site, and has collected approximately $6.1 million in rates, and additional amounts from insurance carriers and other potentially responsible parties. To date, GMP's Pine Street expenditures have exceeded the amounts recovered from all these sources. The final cost of the remediation is not known at this time, nor is GMP's share of the total cost. Exh. GMP-Reb-12; exh. GMP-Reb-30; Ledbetter reb. pf. at 15.

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314. (...continued)
disasters." Docket 6332, Order of 9/21/00 at 4.

We are also persuaded that the Third MOU's treatment of the recovery of storm damage, tree trimming, and regulatory commission expense is appropriate because the rolling average mechanism has resulted in consistent under-recovery of those costs. Amortization of past expenses will enable GMP to recover those costs.

315. Koliander sur. pf. at 4.

316. *Id.* We need not quantify the value of this benefit as the quantification does not affect our overall determination regarding the Third MOU.

111. Paragraph 16 of the Third MOU provides that the final rates contemplated by the Third MOU do not include any recovery of Pine Street costs and do not establish a precedent for rate-making treatment of those costs. Third MOU at ¶ 16.

Discussion

Given that the rates proposed in the Third MOU are not based on a traditional cost-of-service methodology, and that we are approving those rates, there is no need to decide at this time how, and to what extent, costs associated with the Pine Street litigation and remediation should be recovered in rates. Thus, as in the prior GMP rate proceeding,[317] we will leave the appropriate rate-making treatment of Pine Street expenditures for future resolution.

2. Overall Merits of the Third MOU

Findings

112. It is in the public interest to resolve the pending issues from Docket 5983 in a manner that (1) addresses all financial implications, and (2) enables the Company to provide good service and earn reasonable returns on investments. Sedano sur. pf. at 2.

113. Approval of the Third MOU will enable GMP to avoid bankruptcy, to have access to capital markets and financing arrangements, to regain its financial stability, to continue to improve its system, and to provide its customers with safe, reliable and efficient service. Brock reb. pf. at 31; Sedano sur. pf. at 11; Ross sur. pf. at 1–3; Dutton sup. reb. pf. at 2, 10; tr. 11/20/00 at 109 (Dutton); tr. 11/20/00 at 244 (Brock); tr. 11/30/00 at 58–59 (Sedano).

114. Approval of the Third MOU will enable GMP and the state to focus on innovation and service improvements for the benefit of GMP customers. Sedano sur. pf. at 2.

115. The Third MOU will provide GMP with sufficient earnings and cash flows to have a realistic opportunity to earn its allowed return on equity. If the Third MOU is approved, GMP expects to continue to apply FAS 71. Brock reb. pf. at 31; Sedano sur. pf. at 11.

116. The Third MOU will provide a sound foundation for improving GMP's debt ratings and giving the Company access to necessary borrowings. It is likely that GMP will be able to borrow

317. Docket 5983, Order of 6/8/98 at 66–69.

up to $30 million in so-called "bridge financing" if the Third MOU is approved. Approval of the Third MOU will also put GMP in a position to return to the long-term debt market within a reasonable period. Brock reb. pf. at 31, 33; Sedano sur. pf. at 11–12; Ross sur. pf. at 1–2 .

117. GMP has received positive indications from its existing lenders regarding the Third MOU. Tr. 11/20/00 at 245 (Brock); tr. 11/21/00 at 87–88 (Smith); tr. 11/20/00 at 75–76 (Dutton).

118. The Third MOU achieves the best balancing of the various interests in this case and furthers the public interest. Sedano sur. pf. at 7.

Discussion

In order to evaluate whether approval of the Third MOU is in the public interest, it is necessary to review each provision individually, as well as analyze them together as a whole. In Section IV.E.1 of this Order, we reviewed each of the Third MOU's individual provisions; now we turn to a discussion of the Third MOU's overall merits.

We are persuaded by the evidence that approval of the Third MOU will benefit ratepayers by enabling GMP to provide its customers with safe, reliable and efficient service, and to focus on innovation and service improvements, while avoiding the harm to ratepayers that could result from a GMP bankruptcy.[318] Several of the Third MOU's provisions, such as the regulatory asset write-offs and waiver of return on certain regulatory assets, the rate freeze, and the implementation of service quality standards, directly benefit GMP's customers. Other provisions of the Third MOU, such as the rate increase, the deseasonalization implementation date, and the continuation of GMP's dividend at its current level, benefit ratepayers indirectly by helping preserve GMP's viability. These provisions also cost ratepayers, but when viewed in the overall context of the Third MOU, they are reasonable.

Overall we conclude that approval of the Third MOU and all its provisions is in the public interest, and we hereby approve it, with only one technical modification and two

318. *See* the discussion in Section IV.D for a description of the harm that could result to ratepayers from a GMP bankruptcy.

supplements. We cannot find the HQ-VJO Contract to be used-and-useful.[319] Despite this conclusion, in keeping with the Third MOU's intent, we are not imposing a used-and-useful disallowance on GMP, but will instead treat the HQ-VJO Contract *as if* it were used-and-useful. The two supplements are a mechanism to protect ratepayers against unjust enrichment of stockholders, and a restriction on GMP's future investments in unregulated activities. These provisions are discussed in more detail in Sections IV.G and IV.H, below.

F. Other Rate-Making Issues

IBM and AARP have raised certain other issues, both procedural and substantive, concerning the determination of just and reasonable final rates in this Docket. Procedurally, IBM contends that the Third MOU violates the previous Board-approved Memorandum of Understanding in this Docket by improperly updating GMP's cost of service.[320] The latter Memorandum of Understanding as initially filed and approved included the following provision:

> In any filings and proceedings after expiration of the stay, the parties shall be permitted to introduce "updated" power supply cost and proposed power cost disallowances (if any) to reflect known and measurable reductions to power supply costs achieved through negotiations or other means during the period of the stay. Except as to such power supply cost reductions, or replacement power costs resulting from material unanticipated Vermont Yankee outages, updates to GMP's cost-of-service data shall be limited to information existing or known to the parties prior to the date of execution of this MOU. This provision shall not preclude the DPS or IBM from making changes to their recommendations; nor shall this provision preclude GMP from making usual and customary compliance filings. It is the intention of the parties to preserve the procedural status quo during the period of the stay.[321]

The subsequently filed and approved Second Amendment to the MOU provided that, except as expressly provided in the Second Amendment, the provisions of the MOU (including the provision just quoted) were to remain in effect.[322]

319. *See* the discussion in Section IV.E.1.b.
320. IBM Brief at 94–95.
321. Order of 12/11/98, Appendix 1 at ¶ 12.
322. Order of 12/17/99, Appendix 1 at ¶ 19.

The Department opposes IBM's claim that the Third MOU violates the "anti-updating" provision of the earlier MOU. According to the Department, IBM failed to raise the claim within the time limits specified in Board Rule 2.216(C), the "anti-updating" provision specifically allows for the Department to offer a revised recommendation, and in light of the passage of time since the original MOU, the original cost-of-service data do not accurately portray current circumstances.[323] GMP argues that the prior MOU neither prevents the Department from reaching a settlement with the Company, nor precludes this Board from considering current information in evaluating the settlement.[324]

We agree with the Department that IBM did not timely file its objection to the alleged improper updating in the Third MOU. Board Rule 2.216(C) requires objections to prefiled testimony and exhibits to "be filed in writing not more than thirty days after such evidence has been prefiled or five days before the date on which such evidence is to be offered, whichever is earlier." Not only did IBM fail to file such a written objection to the GMP and Department prefiled testimony and exhibits that were offered in support of the Third MOU, IBM did not even make an oral objection during the hearings when the prefiled testimony and exhibits were introduced.[325] Because IBM's objection is not timely, we reject it.

Turning to the additional substantive rate-making issues, IBM has proposed specific cost-of-service disallowances for the 96-01 and 97-01 Agreements, GMP's rate case defense, the Searsburg wind facility, regulatory asset amortization, the 1999 depreciation reserve, Pine Street remediation, employee expenses, and property taxes.[326] AARP asks us to rule that costs associated with the Vermont Yankee nuclear power station are imprudent, and asserts that there has been no stipulation among all parties that GMP may use 2000 as an adjusted test year.[327]

323. Department Reply Brief at 3–6.

324. GMP Reply Brief at 31–32.

325. As the Department notes, the time frames for the rebuttal phase of this Docket were compressed, such that under a strict application of Rule 2.216(C), written objections would have been due on November 15, 2000, two days after the filing of the Third MOU. Department Reply Brief at 4. There is no unfairness here, however, given that IBM objected neither to the November 13 filing deadline nor the November 13 filing of the Third MOU and supporting materials, did not request a waiver of the objection deadline (*see* Board Rules 1.200 and 2.107, authorizing waivers of Board Rules), and did not present any objection at the hearings.

326. IBM Brief at 70–78.

327. AARP Proposal for Decision at 10–12; AARP Post-Hearing Memorandum at 1–2.

GMP opposes the IBM and AARP proposed adjustments, contending that they are unsupported by the record, by law, or by sound policy, and thus should be rejected.[328]

Even if we were to conclude IBM's and AARP's proposed cost-of-service adjustments to be justified under traditional cost-of-service rate-making, they would have no impact on the rates that we set herein, because we are departing from traditional cost-of-service methodologies to instead set GMP's rates on the basis of the Company's cash-flow needs. Thus, we need not — and do not — address IBM's[329] and AARP's[330] proposed adjustments. Likewise, the identification of the appropriate adjusted test year is immaterial, given that there is no cost-of-service to which adjustments are being made, and consequently we do not reach the issue.

G. Protection Against Unjust Enrichment

Positions of the Parties

AARP recommends that any rate increase greater than that supported by traditional cost-of-service methodologies be conditioned on GMP's acceptance of a "recapture" mechanism that would return to ratepayers the difference between revenues that would be collected if rates were based on traditional cost-of-service methodologies, and revenues that would be collected under the authorized rates.[331] Specifically, AARP recommends that GMP be required to grant the

328. GMP Reply Brief at 30–36.

329. The largest among these IBM-proposed adjustments is for the 97-01 Agreement with Hydro-Québec. Pursuant to the 97-01 Agreement, GMP received $8 million from Hydro-Québec in exchange for allowing Hydro-Québec the right to recall up to 80 MW of contract capacity and specified amounts of energy. This arrangement has turned out to be extremely costly to GMP as a result of much higher than anticipated costs for replacing the recalled energy. Rosenberg pf. at 22–23; tr. 11/20/00 at 246–251 (Brock); exh. GMP-Reb-31.

Although we do not rule on this proposed cost-of-service adjustment, we wish to note our skepticism about IBM's contention that it was imprudent for GMP to enter the 97-01 Agreement. The record does not demonstrate that any other New England utility (or, indeed, other commentator) foresaw the extent and degree of volatility that has developed in the New England wholesale power markets. Absent that volatility, the 97-01 Agreement would not have had its adverse effects. Tr. 11/20/00 at 204–206, 215 (Dutton).

Also, Pine Street costs, future capital expenditures, GMP's future dividend level, and certain regulatory assets are addressed in the Third MOU. These provisions of the Third MOU are discussed in Sections IV.E.1.c, IV.E.1.g, IV.E.1.j, IV.E.1.m, and IV.E.1.n, below.

330. AARP has specifically requested, pursuant to 3 V.S.A. § 812(a), that we rule on its proposed finding regarding the prudence of Vermont Yankee costs. AARP Post-Hearing Memorandum at 1–2. We hereby reject that proposed finding because, as noted above, the issue matters not in light of our overall determination of just and reasonable rates.

331. AARP Post-Hearing Memorandum at 3.

Department warrants for the issuance of GMP common equity shares equal in value to the difference between these two revenue levels. AARP envisions that these warrants would be exercised by the Department in the event that GMP is acquired by or merged with another company, or in the event GMP's shares trade at or above book value for a period of six months.[332] Then, the Department would distribute the shares, or the proceeds from disposition of the shares, for the benefit of GMP's ratepayers.[333]

GMP opposes any so-called "recapture" mechanism, claiming that it is unnecessary under the Third MOU, would upset the proper balance of consumer and investor interests embodied in the Third MOU, would raise serious risks for GMP in its access to the capital markets, and could adversely affect consumers in the long run.[334] GMP also asserts that the evidentiary record is inadequate to support the imposition of a recapture mechanism, that no specific mechanism finds support in the record, and that all of the hypothetical concepts raise serious policy and financial issues.[335] GMP characterizes the prospect of an acquisition of the Company at a price greater than book value as "wholly speculative," and suggests that such an event can be addressed appropriately for ratepayers if and when it happens.[336]

The Department recommends that this Board approve the Third MOU without imposing any "recapture" condition. However, the Department advises this Board that if it determines that approval of the Third MOU must be conditioned to provide for recapture of any potential future windfall, this Board should make certain that any conditions it imposes do not jeopardize the Third MOU's goals, one of which is GMP's financial recovery. The Department is particularly concerned that the imposition of a recapture mechanism or uncertainty about its ultimate design or magnitude could impair GMP's access to credit.

The Department acknowledges that unconditioned approval of the Third MOU could create a potential windfall for stockholders with no direct offsetting benefit to ratepayers who were entitled to, but through this Board's forbearance did not get the benefits of, a disallowance

332. *Id*.
333. Bradford/Silkman sur. pf. at 39–40.
334. GMP Reply Brief at 19, citing its Proposed Findings (143–159) and Brief (at 28–34).
335. GMP Reply Brief at 20–21.
336. *Id*.

based on the prudence and used-and-useful doctrines.[337] However, it argues that traditional rate-making can address these concerns to some degree at the time of some future merger or disposal of assets.[338]

Overall, the Department asserts that there is inadequate testimony in the record to safely define the parameters of such a mechanism.[339] However, it does provide some recommendations if this Board chooses to impose such a mechanism. The Department suggests a mechanism that would require the transfer of a specific amount of money (or equivalent value in common or preferred stock in an acquiring company, if the acquisition is for stock rather than cash) from the proceeds of any merger or acquisition that exceeds net book value to a Trustee for the benefit of ratepayers.[340] The Department advises this Board to fix the amount *now,* and asserts that the amount should be less than $10 million. The Department is concerned that a higher amount could interfere with GMP's ability to access the capital markets.[341]

In their briefs, no other party took a position on AARP's proposed recapture mechanism.

Findings

119. A mechanism designed to share with ratepayers a future windfall would not adversely affect GMP's ability to secure access to the capital markets, if the mechanism is triggered by a merger or acquisition that involves a premium paid above book value, involves a predetermined amount of money, is clear and simple in its articulation, is measurable by the outside investor in its impact, and is relatively moderate in scale. Tr. 12/1/00 at 105–106, 135 (Ross); tr. 11/29/00 at 164–165, 175 (Brock).

120. A windfall sharing mechanism that required GMP to share with ratepayers a predefined dollar amount in the event of a merger or acquisition may require a FAS 5 write-down, but such a

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337. Department Brief at 49, citing Board comments, including: tr. 11/29/00 at 171–173 (Chairman Dworkin); tr. 11/30/00 at 29–33, 143–152 (Chairman Dworkin); tr. 12/1/00 at 109–110 (Chairman Dworkin).

338. The Department cites: *Amended Joint Petition of GTE Corporation, Contel Corp. and WFT Acquisition Co.*, Dockets 5716/5717, Order of 12/12/95 at 33; *Investigation into the Existing Rates of Vermont Telephone Company, Inc.*, Docket 5904, Order of 11/10/97 at 143; *Joint Petition of Central Vermont Public Service Corp. and Allied Light & Power Co.*, Docket 5396, Order of 7/18/90 at 30.

339. Department Brief at 50.

340. Department Brief at 51.

341. *Id.*

write-down would be unlikely to create problems for the Company given that the Company's continuing viability would likely not be an issue if it were being merged or acquired. In addition, such a write-down should not cause the Company to discontinue to apply FAS 71, as long as its future rates will be set by reference to its costs. Tr. 11/30/00 at 29–38 (B. Reed).

121. In a bankruptcy, the return to equity holders is determined by many factors. In GMP's case, the likelihood of very significant claims against the Company by Hydro-Québec and potential cross claims by the other Vermont Joint Owners and by the Participants in the HQ-VJO Contract, among other claims, would likely result in little or no value remaining for shareholders. In the case of a liquidation, as opposed to a reorganization, shareholders rarely receive any distribution. Miller reb. pf. at 9–10.

122. Under the covenants of its August 12, 1997, Credit Agreement with Fleet National Bank and two other banks, GMP could create, incur, or assume not more than an additional $9.0 million in short-term debt (excluding certain payment obligations related to capital leases), including an additional $500,000 in permitted liens and $500,000 in permitted company guarantees. Exh. Board-Reb-2, document marked as PSB 1-1g (8/12/97 Credit Agreement attached as exhibit 4-b-18, section 8.1, to GMP's 1997 Form 10-K).[342]

Discussion

In its arguments supporting the imposition of a recapture mechanism, AARP has raised a critical issue that is of great concern to us: the possibility that approval of the Third MOU (which enables GMP to recover its HQ-VJO Contract costs) will lead to a financial windfall for shareholders as the result of an acquisition offer or asset sale at substantially above book value. Today's Order provides for GMP's customers to pay rates in excess of those that they would under traditional cost-of-service rate-making. These higher rates are necessitated by the risks to GMP's customers from the Company's dire financial situation, a situation that has resulted from

342. The August 12, 1997, Credit Agreement was included with GMP's 1997 Form 10-K as an attachment. The 1997 Form 10-K is one of the documents that this Board requested of GMP and that were subsequently admitted into the record as exh. Board-Reb-2. The particular copy of the 1997 Form 10-K that GMP provided to this Board was missing this attachment. Because the 1997 Credit Agreement is in fact part of the 1997 Form 10-K, it is accordingly part of exh. Board-Reb-2.

GMP's own management decisions. Among the most damaging was GMP's decision to invest heavily in unregulated activities, investments undertaken solely for the benefit of shareholders and not for ratepayers. (Had those investments proven wise, shareholders rather than ratepayers would have received the returns.) As a result of these hugely unprofitable unregulated activities, as well as GMP's decision to continue paying (until recently) unjustifiably high dividends and the Company's imprudent early lock-in to the HQ-VJO Contract, GMP's financial viability now requires the collection of revenues higher than those calculated by routine rate-setting methodologies.

Ratepayers are thus providing, through additional rates, the funding for GMP to recover from a financial crisis that is largely of its own making. In the future, with its financial viability far less strained and the HQ-VJO Contract costs addressed, it is possible that GMP's present shareholders could realize, through an asset sale or acquisition offer, a financial windfall.[343] Such a windfall would be unattainable but for the financial stability enabled by approval of the Third MOU — and the unusual contribution that will be collected from GMP's customers.[344]

To avoid such unjust enrichment, and in consideration of ratepayers who will pay higher rates than are justified by routine rate-making procedures, we find it essential that the rates approved today be accompanied by a mechanism by which ratepayers will share in the above-book proceeds of any future sale or merger of the Company, or sale of its regulated assets.[345]

Our decision to condition acceptance of the Third MOU on a windfall sharing mechanism is entirely consistent with the rationale that the Third MOU itself reflects in two of its provisions. First, the Third MOU includes an earnings cap, such that if GMP exceeds its allowed return on equity, the excess will be returned to ratepayers.[346] As Department Commissioner Sedano testified, this provision protects ratepayers against the prospect of the Company earning windfall

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343. This Board in this Order takes no position on, and neither encourages nor discourages, any merger, acquisition, or asset sale.

344. In this sense, it would meet the traditional criteria for "unjust enrichment." *See* BLACK'S LAW DICTIONARY, (1991) at 1068.

345. In designing that mechanism, our "discretion is not limited to selecting from recommendations made or supported by the parties." *In re Citizens Utilities Company*, No. 97-436, slip op. at 14–15 (Vt. Dec. 15, 2000).

346. Third MOU at ¶ 19.

profits[347]— precisely the rationale for our decision here to implement a mechanism for ratepayers to share in any above-book premium that the Company might realize in a future asset sale, acquisition, or merger.

Second, the Third MOU requires GMP to pass on to ratepayers the benefits of a favorable outcome to its Hydro-Québec ice storm arbitration. That provision would return those benefits to ratepayers because ratepayers will, as a consequence of the Third MOU, be paying higher rates than they would otherwise to provide GMP with full recovery of its ongoing HQ-VJO Contract costs, a contract to which GMP imprudently locked-in early. It would be manifestly unfair to allow shareholders alone to reap the benefits of a successful arbitration while ratepayers continued to bear the burden of higher rates. Similarly, the higher rates that we establish today are required to prevent harm to ratepayers from GMP's precarious financial condition, a condition that is the result of GMP's own management decisions. It would be just as unfair to allow shareholders alone to reap fully the benefits of an above-net-book premium after the Company has regained, at ratepayer expense, its financial strength.

Regulatory commissions and legislatures in other states have recognized the appropriateness of requiring such windfalls to be shared with ratepayers, when ratepayers have provided a financial contribution that justifies such sharing. For example, several states, in restructuring their electric industries to bring retail choice to customers, have allowed recovery of *estimated* stranded costs from ratepayers, and required subsequent true-ups to avoid overcollections from ratepayers.[348]

Likewise, the Michigan Public Service Commission required Consumer Energy Company to return to ratepayers $11.7 million of the excess above book value realized from the sale of the facilities and assets of the former Marysville Gas Reforming Plant (which produced synthetic natural gas). The Michigan Commission at one time had determined the Marysville plant to be prudent and used-and-useful, and thus had allowed its costs to be recovered from ratepayers. Due to changing conditions in the gas market, the Marysville plant became uneconomic to

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347. Sedano reb. pf. at 9; tr. 11/30/00 at 74 (Sedano).

348. These states include Michigan, Connecticut, Maine, Texas, and New Hampshire. MICH. STAT. ANN. § 460.10a; CONN. GEN. STAT. ANN. § 16-245e; ME. REV. STAT. ANN. tit. 35-A, § 3208; TEX. UTIL. CODE ANN. § 39.262; *Re PSNH Proposed Restructuring Settlement*, 204 P.U.R. 4th 392 (N.H.P.U.C. Sept. 8, 2000).

operate, so the utility mothballed the plant. As a result, the Michigan Commission ruled that it was no longer used-and-useful, and required that its costs be shared between shareholders and ratepayers (by removing the plant from rate base but allowing its amortization, thus providing for a return of, but not on, the investment). When, ultimately, Consumers Energy transferred the Marysville plant to an affiliate, the Michigan Commission determined that the full gain that the utility realized should be returned to ratepayers, because, over the years, "ratepayers paid for the majority of the Marysville costs through base rates."[349]

This Board has also, itself, previously recognized the necessity and appropriateness of provisions for ensuring against unjust enrichment of utility shareholders at ratepayer expense. In approving an Incentive Regulation Plan for Bell Atlantic-Vermont, this Board noted that it would exercise its authority to reopen the Plan for further consideration if the relative value of service provided in Vermont were to deteriorate while *at the same time* Bell Atlantic's earnings in Vermont remained high compared to those in its other states of operation.[350]

Having determined that we cannot approve the Third MOU without an additional mechanism designed to protect against unjust enrichment of utility shareholders at ratepayer expense, we now turn to the details of that mechanism. AARP proposes that GMP issue stock warrants sufficient in number to fully compensate GMP's ratepayers for any imprudent or uneconomic costs included in GMP's rates. AARP's proposal aims at providing a cure to a significant and very real problem; however, many elements of AARP's recapture proposal are incomplete. There is insufficient evidence on record to implement AARP's recommendation in a rigorous way, and with a high degree of confidence that issuance of the stock warrants would not defeat the fundamental purpose behind our approval of the Third MOU: to benefit GMP's ratepayers by giving GMP the opportunity to regain access to the capital markets, thereby avoiding bankruptcy. Therefore, we do not impose the condition requested by AARP.

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349. *Re Consumers Energy Company*, 1999 WL 1425412 (Mich. P.S.C. Nov. 16, 1999). An administrative law judge had recommended that ratepayers receive 75 percent of the gain, and shareholders the remaining 25 percent. The Michigan Commission indicated that normally it would have been inclined to accept a 75/25 sharing, but in this instance found the calculation of the gain from this affiliate transaction was less than would have been realized in a fair-market, arms-length transaction, so that the full amount should be returned to ratepayers as a "shortcut" to a more precise valuation and allocation.

350. *Investigation into an Alternative Regulation Plan for New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont*, Dockets 6167/6189, Order of 3/24/00 at 126–129.

We recognize, as we have been counseled, that the greater the certainty regarding how the mechanism will operate, the greater will be the comfort of the financial markets.[351] We have identified four essential elements of the mechanism and one significant constraint upon its operation. We resolve the fundamental details for three of the four elements. We leave it to the discretion of the Company whether the fourth is to be specified in the near future or be left unresolved until the time of a triggering event (merger, acquisition, or asset sale).

The four elements are:

(1) the triggering event;

(2) the dollar amount;

(3) the beneficiaries; and

(4) the specific manner in which ratepayers receive their restitution.

The constraint is that:

(5) the windfall sharing mechanism will not be applied if it would materially impair the continued financial viability of the Company.

We discuss each of these in sections (1) through (5), below.

1. Trigger

The windfall sharing mechanism shall be triggered by any one of the following: (1) any merger of GMP with another company; (2) any acquisition of control of GMP that requires Board approval under 30 V.S.A. § 107; and (3) the sale or lease of any of GMP's assets so substantial as to require Board approval under 30 V.S.A. § 109.[352]

351. Tr. 12/1/00 at 105–106 (Ross); tr. 11/29/00 at 164–165, 175 (Brock).

352. These events will trigger the windfall sharing mechanism even if they occur in the context of a bankruptcy proceeding. Although today's Order renders remote the possibility of a GMP bankruptcy, this Board controls neither the Company's business decisions nor the course of future events. Thus, a GMP bankruptcy, though unlikely, remains possible (as it does for all companies in the United States). We expressly declare that the $8 million windfall sharing mechanism represents a predefined regulatory obligation accruing to ratepayers, like the customer refunds at issue in the Columbia Gas bankruptcy. *See In re Columbia Gas Systems, Inc.*, 997 F.2d 1039, 1055–1062 (3d Cir. 1993), *cert. denied*, 510 U.S. 1110 (1994).

We have also considered a trigger based on a sustained high stock price, as recommended in AARP's brief. However, we decline to adopt it, for the reasons described by Department witness Ross in his oral testimony.[353]

2. Magnitude

The amount of the premium above net book value that is to be returned to ratepayers shall be subject to two limits (as well as the constraint described below). First, ratepayers will receive only one-half of the value of the premium in order to maintain GMP's incentive to maximize the total value of the transaction. If we allocated the full above-book value to ratepayers, we would run the risk of undermining this incentive.[354]

Second, there shall be an absolute limit or cap on the dollar value to be returned to ratepayers. We conclude that this cap shall be $8 million, in year-2001 dollars (i.e., the cap shall be adjusted for inflation), and shall be a limit on overall, cumulative recoveries.[355]

We have arrived at the $8 million figure after careful consideration of two fundamental factors: the additional amounts that ratepayers will be paying in rates in excess of those that we would establish using a traditional cost-of-service methodology, and the potential impact of the windfall sharing on the Company's financial well-being.

Given that the Third MOU provides that this Board will not impose future disallowances related to GMP's imprudence in locking-in early to the HQ-VJO Contract, the possible level of this disallowance over the remaining life of the Contract is one indication of the amounts

353. Tr. 12/1/00 at 113–114, 126–129, 136–138 (Ross).

354. In like fashion, for approximately a decade prior to the sale of the Marysville Gas Reforming Plant, the Michigan Public Service Commission allowed Consumers Energy Company to retain one-half of any venture profits for shareholders, while returning the other half to ratepayers, to create an incentive for the utility to maximize the revenue potential of alternative uses of the Marysville Plant assets. *See Consumers Energy*, 1999 WL 1425412.

355. For example, if GMP engaged in a transaction that triggered the windfall sharing mechanism and that produced a $10 million (year-2001 dollars) premium above net book value, GMP would return one-half of the $10 million, or $5 million, in value to its ratepayers. If GMP then engaged in a second triggering transaction that produced a $12 million (year-2001 dollars) premium, the value returned to ratepayers would be limited to $3 million (year-2001 dollars) to achieve the *overall*, cumulative return of $8 million.

ratepayers will be paying in excess of GMP's cost of service.[356] However, in Section IV.B, we concluded that we were unable to determine a range of prudence damages for the remaining life of the Contract. In that same Section we did determine that, regardless of the uncertainties that we recognized, any reasonable measure of the net present value of the potential damages would significantly exceed $8 million. This partial estimate of the financial burden the Third MOU will place on GMP's ratepayers provides guidance as to the reasonable range for windfall sharing.[357]

We recognize, however, that other realities and uncertainties must serve to constrain the magnitude of windfall sharing to a lower amount. In particular, our fundamental concern for avoiding harm to GMP's ratepayers by maintaining the Company's financial viability counsels that we limit the windfall sharing to a figure to which the capital markets should not take exception. We have determined that an $8 million cap should meet this requirement. In 1997, when GMP was rated as an investment-grade company, it was permitted to incur $9 million of additional short-term leverage (including covenants allowing up to $500,000 in additional liens and company guarantees of another $500,000) under the original Credit Agreement, dated August 12, 1997, with Fleet National Bank and two other banks. Although the windfall sharing mechanism that we require as part of today's Order is not the same as short-term borrowing, it nonetheless represents a financial obligation — one that is, in essence, a contingency — of the Company. Since the prospect of GMP incurring as much as $9 million in additional financial obligations did not deter banks from extending credit to GMP in 1997, we conclude that a financially restored GMP should likewise be able to assume up to an $8 million windfall sharing obligation without impairing its access to conventional sources of credit, particularly since this obligation is triggered only by the decision by a third party to pay a premium above the book value of the asset being transferred.

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356. The level of a possible theoretical used-and-useful disallowance is another such indication. In Section IV.B we found that the HQ-VJO Contract's uneconomic costs were approximately $106 million (before consideration of the Contract's environmental benefits) over the remaining term of the Contract. A 50/50 sharing of those costs between stockholders and ratepayers could result in a disallowance of as much as $53 million; however, the amount of this disallowance would depend significantly upon the amount of a prudence disallowance imposed.

357. We do not seek, in the application of a mechanism to protect against the unjust enrichment of stockholders, to hold GMP's ratepayers completely harmless for the additional burden of shouldering imprudently-incurred HQ-VJO Contract costs, for it would be impractical to do so. By the Department's or IBM's estimates, the amount to accomplish such an objective might approach or exceed GMP's recent market capitalization.

Thus, due to the Company's financial difficulties, and accordingly to provide a margin of comfort for GMP's financial viability, we have consciously chosen a value from the lower limit of the reasonable range of possible amounts to be shared.[358]

3. Beneficiaries

The beneficiaries of this windfall sharing mechanism shall be the Company' s ratepayers during the period in which the funds are returned to ratepayers. Thus, if the specific sharing mechanism as finally designed provides for the return of value to ratepayers over a period of time, then the beneficiaries will be the Company's ratepayers during that same period of time. We explicitly recognize, and anticipate, that the repayment to ratepayers could either: (i) be provided to ratepayers immediately in the event of a triggering occurrence; or (ii) be extended over time, so that it does not then create an undue financial strain on the Company that might result from a one-time full-value repayment.

4. Specific Procedure

We are mindful of the cautions offered by GMP and the Department regarding the possibility that imposition of a windfall sharing mechanism could have one or several adverse effects. Among those concerns are: extending the present uncertainty regarding the ultimate regulatory treatment of GMP's HQ-VJO Contract costs; impairing GMP's near- and long-term cash flows, which are necessary to repay existing or new debt; impairing GMP's ability to attain minimum financial ratios, which are requirements of existing or new debt; deterring business combinations that would otherwise benefit GMP's ratepayers and the state at large; and creating uncertainty or complexity in the valuation of GMP's equity, which might deter investors and raise GMP's cost of capital.

358. We view the prior level of debt obligation as a guide to the overall reasonableness of the amount to be shared, rather than as the primary direct determinant of that amount. We similarly tested the determination of an appropriate disallowance of Seabrook costs for Central Vermont Public Service Corporation by reference to alternative methods for calculating the disallowance, although none of them directly dictated the specific actual result. Docket 5132, Order of 7/31/87 at 59–60.

All of these concerns and cautions are legitimate and worthy of careful consideration. However, we also are influenced by testimony that clarity and predictability are desirable. We have provided much of that predictability by specifying the trigger, the amount, the beneficiaries, and a significant constraint for this provision. With targeted and expert testimony describing the design options for a windfall sharing procedure and exploring the implications of such potential procedures, creation of a workable and effective procedure is feasible.[359] We leave it to the discretion of GMP whether the specific design of the procedure will be determined at the time of the first triggering event, or instead in a new investigation to be opened promptly, if the Company so petitions.

5. Constraint

Implementation of any windfall sharing mechanism must not defeat the ultimate purpose of the Third MOU — to protect GMP's customers and the customers of other Vermont electric utilities from the potential adverse consequences of a GMP bankruptcy. The continued financial viability of the Company will represent a constraint on the design and operation of the sharing mechanism. Thus, the windfall sharing mechanism will be designed not to undermine GMP's access to capital markets, and will not be implemented — even if a triggering event occurs — if the Company makes a compelling showing that to do so would precipitate, or contribute to, a financial crisis for the Company or any successor.

H. Future Investments in Unregulated Subsidiaries

Findings

123. GMP's investments in unregulated activities have been a significant factor in causing the financial difficulties that the Company now faces and that lead to the rates approved today. Findings 20–27, above.

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359. Any such procedure must ensure that the benefit provided to ratepayers is in addition to (rather than a replacement for) other benefits appropriately assigned to ratepayers at the time of the future sale, merger or acquisition.

124. In late 1997, GMP decided to sell or liquidate its unregulated subsidiaries. Tr. 11/20/00 at 70 (Dutton).

125. Since that time, GMP has sold Green Mountain Propane Gas, Limited, Green Mountain Energy Resources, L.L.C., and a portion of Mountain Energy, Inc. An additional portion of Mountain Energy is under contract to be sold, and the remaining portion is on the market. Tr. 12/1/00 at 179–180 (Dutton); findings 21, 22, and 25, above.

126. GMP is committed to the sale of the remainder of Mountain Energy, Inc. Tr. 12/1/00 at 180 (Dutton).

127. GMP invested $400,000 in Mountain Energy, Inc., in 2000. The Company does not plan to make any investments in its unregulated subsidiaries during 2001 or 2002. Tr. 11/21/00 at 43 (Brock); exh. GMP-Reb-28, document marked as NRB/AJK 1 at 8, document marked as NRB/AJK 2 at 12, and document marked as NRB/AJK 3 at 14.

Discussion

From the late 1980's through September 30, 2000, GMP invested more than $43.5 million in three unregulated subsidiaries. After recovering almost $21.7 million from asset sales, and incurring write-offs and losses of almost $13 million, GMP still has almost $8.2 million invested in these unregulated subsidiaries, and there is neither a defined period for the recovery of that investment nor any guarantee of eventual recovery.[360] Some of GMP's unregulated subsidiaries have underperformed the Company's regulated operations for at least the last ten years, and have had particularly serious effects on the Company's financial health during the last three years. GMP has been in the process of selling these subsidiaries for three years; the sale of the remaining assets has taken longer than expected.[361] Throughout this period, the unregulated subsidiaries have continued to incur losses, and GMP has continued to finance them (most recently in early 2000) in order to maintain their value for a possible future sale.

360. *See* finding 20, above.

361. GMP CFO Brock testified on December 10, 1999, that GMP expected the sale of some of Mountain Energy, Inc.'s assets to close in January or early February, 2000. As of December 1, 2000, this sale was still pending. Tr. 12/10/99 at 10, 23 (Brock); tr. 12/1/00 at 179 (Dutton).

The Third MOU asks this Board to set rates using a method other than cost-of-service rate-making. In other words, the Third MOU asks this Board to allow GMP to collect revenues from ratepayers that it would not be able to collect if traditional cost-of-service rate-making were employed. However, the Third MOU does not address GMP's unregulated activities.[362]

We are concerned about the impact GMP's unregulated activities could have on the Company's financial health in the future. GMP's track record in this area is poor, and we want to minimize the risk that GMP will incur additional losses as a result of unregulated activities while rates based on the Third MOU (which are higher than they would be under cost-of-service rate-making) are in effect. Our purpose for setting rates based on the Third MOU is to sustain the regulated operations that directly serve ratepayers, not to support GMP's unregulated subsidiaries.

In the ordinary course of things, utility commissions rely upon accounting separations as adequate to ensure that costs associated with unregulated enterprises are not included in rates. However, in this case, and over the last several years, those unregulated activities had a significant effect on both GMP's overall financial health and on investors' perceptions — *despite* accounting separations. In fact, the parties to the Third MOU ask us to base rates on GMP's actual financial needs and not on traditional cost-of-service methodologies. Thus, it is clear that reliance on accounting separations alone is inadequate to protect ratepayers under these circumstances.

For this reason, today's Order converts GMP's announced business strategy into a legally-binding commitment, as an element of our equitable decision to allow rates in excess of those resulting from traditional rate-making methodologies. We order the Company to continue its

362. Department Commissioner Sedano testified that the performance of GMP's unregulated subsidiaries was not considered when the Third MOU was negotiated because the focus of the Third MOU is on improving GMP's financial condition, not on analyzing the causes of its current condition. The Department recognized that GMP's unregulated subsidiaries' performance may have contributed to the Company's current financial situation, but asserted that since GMP is trying to sell its remaining poor-performing investments, these investments are not likely to have a significant impact on the Company's financial situation in the future, and therefore were not viewed as relevant during the Third MOU negotiations. Tr. 11/30/00 at 92–94 (Sedano).

policy of selling Mountain Energy, Inc.[363] In addition, we prohibit GMP from investing additional funds in any new unregulated ventures during the period in which rates based on the Third MOU are in effect, with one caveat: if GMP chooses to reduce its dividend below the level agreed to in the Third MOU, the funds which otherwise would have been distributed directly to shareholders, may be invested in new unregulated ventures.

Finally, we emphasize that we are relying on GMP CFO Brock's testimony that GMP does not plan to make any investments in Mountain Energy, Inc. during the period in which rates based on the Third MOU are in effect. We expect GMP not to invest additional funds unless it is clearly necessary to wind down or sell GMP's remaining investment in an orderly fashion. This is an area of great concern to us, and it is highly likely that we will ask GMP about its investments in Mountain Energy, Inc. in the future. GMP should be aware that we are inclined to look unfavorably on any additional investment of funds in Mountain Energy, Inc. during the period in which rates based on the Third MOU are in effect.

V. Conclusion

We conclude that the interest of Vermont electric ratepayers, both in GMP's service territory and elsewhere will be best served by approval of the rates set out in the Third MOU. This rate increase, which is in excess of the rates we would establish using a traditional cost-of-service methodology, will provide GMP with sufficient revenues to operate consistent with its public service obligations, regain access to capital markets, and have a reasonable opportunity to avoid bankruptcy. Fundamental to this conclusion is our determination that the benefits of bankruptcy are uncertain, and are outweighed by the risks — a critical one of which is the potential that a GMP bankruptcy could lead to the bankruptcy of other Vermont utilities due to step-up provisions in the HQ-VJO Contract and Participation Agreement. The bankruptcy of GMP and other Vermont utilities is likely to have serious adverse effects upon electric ratepayers throughout the state and, therefore, should be avoided if possible. Therefore, we establish rates

363. We hereby require GMP to inform this Board when the pending sale of some of Mountain Energy, Inc.'s assets closes, and when any sales contracts are entered into, and close, for any of Mountain Energy, Inc.'s other remaining assets.

that, while in excess of those generated by traditional cost-of-service methodologies, fairly balance the interests of GMP's ratepayers and the Company and are just and reasonable.

In summary, we reach the following conclusions:

- We approve a rate increase of 3.42 percent over present temporary rates (or 12.42 percent over final rates established in our Docket 5983 Orders of February 2, 1998, and June 8, 1998).
- We find the temporary rates in effect since 1998 to be just and reasonable as final rates during the periods in which they were in effect.
- We modify GMP's rate structure to establish year-round electric rates in place of the existing seasonal rates.
- We approve the Third MOU, and will allow recovery of costs associated with the HQ-VJO Contract, treating the Contract *as if* it were used and useful, although applying accepted rate-making standards, we do not find the Contract to be used and useful. The Third MOU includes several benefits for ratepayers, of which the most significant are:

  (i) the write-off of certain expenses for which GMP may otherwise seek recovery from ratepayers;

  (ii) a two-year freeze on electric rates;

  (iii) a cap on the Company's earnings for 2001 and 2002;

  (iv) the establishment of service quality standards to assure continued high quality electric service for ratepayers;

  (v) enhanced right-of-way maintenance and agreed-upon levels of capital spending for reliability; and

  (vi) an assurance that any proceeds gained from GMP's (and other VJO members') arbitration of the HQ-VJO Contract arising from the 1998 ice storm will be flowed through to ratepayers.
- Because our Order requires ratepayers to pay rates in excess of those we would establish using a traditional cost-of-service methodology, we balance our approval of the Third MOU with two additional requirements:

  (i) If GMP sells some or all of its assets or merges with another company, then ratepayers and the Company shall share any profit above book value derived from the transaction, up to a maximum sharing of $8 million; and

  (ii) For the period in which the present rates remain in effect, GMP may not invest any additional funds in unregulated ventures (with limited exceptions).

Overall, we conclude that the resulting rate levels, subject to the conditions we adopt, are fair to GMP's ratepayers and to the Company.

VI. Order

It Is Hereby Ordered, Adjudged and Decreed by the Public Service Board of the State of Vermont that:

1. The Third Memorandum of Understanding between Green Mountain Power Corporation ("GMP") and the Vermont Department of Public Service ("Department"), filed November 13, 2000, ("Third MOU") is approved, with one technical exception and with two additional safeguards. The technical exception is that rather than find that GMP's share of the Hydro-Québec/Vermont Joint Owners power purchase contract (the "HQ-VJO Contract") is used-and-useful, we will treat GMP's share of the contract as if it were used-and-useful. The two additional safeguards are set forth in Paragraphs 25 and 26, below.

2. GMP is entitled to rates that will produce additional retail revenues in the amount of $6,100,000 or 3.42 percent above existing temporary rates for bills rendered on or after January 23, 2001.

3. The temporary rates that have been in effect for the period between December 15, 1998, and January 23, 2001, are just and reasonable, and shall be the final rates for that period.

4. As provided in the Third MOU, GMP shall eliminate its seasonal rates beginning with the first billing cycle in April 2001. Any additional revenues received by GMP in 2001 as a result of this rate design change shall be deferred and used as income in 2001, 2002, or 2003 for the purpose of assuring that GMP's regulated operations earn the allowed rate of return in each of those years. If at the end of 2003 any additional revenues still exist, the balance shall be applied to reduce regulatory asset accounts as approved by this Board.

5. GMP shall file revised tariffs with this Board and the Department in conformance with the above findings and conclusions within five (5) days of the issuance of this Order.

6. GMP's allowed rate of return on common equity shall be 11.25 percent. If the Company's earnings on core utility operations exceed this level in 2001, the excess shall be returned to ratepayers through reductions to regulatory asset accounts or through other means as approved by this Board. Any excess in 2002 or succeeding years shall also be returned to ratepayers in a similar manner, unless the Third MOU is superceded by a new Board-approved agreement on rates.

7. GMP shall write down the September 30, 2000, balance in its Deferred State Regulatory Expense account.

8. GMP shall not seek to earn a return on any unamortized deferred costs associated with prosecution of the ice storm arbitration over the remaining term of the HQ-VJO Contract unless the Vermont Joint Owners prevail and the result materially reduces GMP's cost of service.

9. GMP shall forego its return on unamortized balances in its regulatory asset account entitled "HQ ABC," which relates to costs of the original HQ-VJO Contract approval proceedings.

10. GMP shall not, prior to April 15, 2002, file a request for a rate increase unless: (1) GMP's aggregate projected power costs for twelve months exceed aggregate budgeted twelve-month power costs (as set forth in Attachment D of the Third MOU) by at least $3.75 million, exclusive of changes in load and the associated power cost component of revenues; (2) GMP experiences a significant loss of customer load resulting in revenue loss materially exceeding supply cost savings; or (3) retail choice is implemented.

11. If there is a major storm, power supply interruption, or outage in excess of forecasted outage rates relating to the Vermont Yankee nuclear power plant or Hydro-Québec deliveries, GMP may seek emergency rate relief pursuant to 30 V.S.A. § 226(a) or seek an accounting order from this Board permitting the deferral of costs associated with the event.

12. If GMP's aggregate annual power costs exceed its budgeted power costs for calendar years 2001 or 2002 by more than $2 million, GMP may seek the issuance of an accounting order permitting GMP to book and defer any such excess costs.

13. Beginning in 2001, GMP shall measure and report to this Board and the Department its customer service, safety, and reliability performance as detailed in the Service Quality & Reliability Performance, Monitoring & Reporting Plan which is Attachment G to the Third MOU. The Service Quality & Reliability Performance, Monitoring & Reporting Plan includes minimum performance standards for some of the performance measures defined in the Plan, and sets out a process for determining the remaining minimum standards. GMP shall submit the remaining minimum standards to this Board for approval by March 15, 2001. The Plan shall be in effect for two years following Board approval of the remaining performance standards.

14. GMP shall spend $2.88 million on enhanced right-of-way maintenance and pole testing and treatment in 2001. If the amount actually spent in 2001 is less than $2.88 million, the difference shall be applied to reduce a deferral account designated by this Board. GMP shall maintain an equivalent per year spending level until its enhanced right-of-way maintenance plan is completely implemented.

15. GMP's capital expenditures shall total at least $12.8 million in 2001, at least $15.4 million in 2002, at least $15.4 million in 2003, and at least $14.7 million in 2004.

16. GMP shall discontinue booking, deferring and recovering the Account Correcting for Efficiency for Energy Efficiency Utility core program savings after December 31, 2001.

17. GMP shall not raise its dividend above the current level of $0.55 per share until it has obtained new permanent long-term debt or equity financing to replace all or substantially all of GMP's short-term and intermediate debt.

18. GMP shall not, in this or any future proceeding to determine GMP's rates, be subject to any further penalty or disallowance of costs incurred in the purchase of power pursuant to the HQ-VJO Contract based on GMP's prudence relating to any act or omission occurring prior to November 13, 2000.

19. Any financial value to GMP resulting from the pending ice storm arbitration shall be used to reduce ratepayer expense. Specifically, if any arbitration panel award or settlement relating to GMP's Hydro-Québec power supply costs results in the payment of money to GMP, GMP shall use the funds to reduce the balances of deferred costs associated with prosecution of the ice storm arbitration, then to reduce balances in other regulatory asset accounts as approved by this Board. If the arbitration panel award causes material reductions to GMP's cost of service, GMP shall file a petition with this Board to adjust its rates to reflect the cost reduction.

20. Once this Order is final and non-appealable, GMP shall withdraw its appeal of this Board's Order in Docket 5983 which is pending before the Vermont Supreme Court.

21. GMP shall continue to amortize its regulatory asset account balances subject to recovery in this case relating to federal regulatory commission expense, tree trimming, storm damage, and the ice storm of 1998, over seven years, beginning January 1999.

22. GMP shall amortize deferred state regulatory expenses recorded after September 30, 2000, over a seven-year period beginning the quarter after they are recorded. GMP shall not accrue or recover carrying charges on the unamortized balance during 2001 and 2002.

23. This Order makes no determination, and shall not establish a precedent, concerning rate-making treatment of Pine Street Barge Canal Superfund Site expenditures or of Pine Street recoveries.

24. GMP shall not accrue Allowance for Funds Used During Construction on Construction-Work-In-Progress during the period in which the final rates determined in this Docket are in effect.

25. As is more fully described in Section IV.G of this Order, GMP's ratepayers shall receive fifty percent of the above-book proceeds of any sale or merger of GMP, or sale of its regulated assets, subject to a cumulative limit of $8 million, such limit to be adjusted for inflation. GMP shall notify this Board no later than February 14, 2001, as to whether GMP requests a prompt Board investigation into the specific design of the procedure by which the windfall sharing is to be implemented.

26. GMP shall continue its policy of selling Mountain Energy, Inc. GMP shall inform this Board when the pending sale of some of Mountain Energy, Inc.'s, assets closes, and when any sales contracts are entered into, and close, for any of Mountain Energy, Inc.'s, other remaining assets. GMP shall not invest additional funds in any new unregulated ventures during the period in which rates based on the Third MOU are in effect, except that, if GMP chooses to reduce its dividend below the level agreed to in the Third MOU, the funds which otherwise would have been distributed directly to shareholders may be invested in new unregulated ventures.

27. All findings and conclusions requested by the parties and not specifically adopted above are, hereby, rejected.

DATED at Montpelier, Vermont, this 23rd day of January, 2001.

s/Michael H. Dworkin	)	
	)	PUBLIC SERVICE
	)	
s/David C. Coen	)	BOARD
	)	
	)	OF VERMONT
______________________	)	

OFFICE OF THE CLERK

FILED: January 23, 2001

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 this 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 this 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 this Board within ten days of the date of this decision and order.

Appendix A: Hearing Dates

Public Hearing

With the assistance of Vermont Interactive Television, October 20, 1998, at the following Vermont locations:

Bennington	Brattleboro
Colchester	Middlebury
St. Johnsbury	Springfield
Waterbury	

Technical Hearings

Montpelier, Vermont

October 19, 20, 21, 22, 27, 28, 30, 1998
December 1, 1998
August 30, 1999
December 10, 14, 1999
November 20, 21, 22, 27, 28, 29, 30 and December 1, 2000

Oral Argument

Montpelier, Vermont

October 16, 1998

Appendix B: Appearances

James Volz, Esq.
Sarah Hofmann, Esq.
for Vermont Department of Public Service

Michael H. Lipson, Esq.
Jeffrey P. Trout, Esq.
for Green Mountain Power Corporation

Gerald R. Tarrant, Esq.
Tarrant, Marks & Gillies
for Green Mountain Power Corporation

Michael P. Drescher, Esq.
Donald J. Rendall, Jr., Esq.
Sheehey Furlong Rendall & Behm
for Green Mountain Power Corporation

Harriet Ann King, Esq.
King & King
for Vermont Yankee Nuclear Power Corporation

Gregg H. Wilson, Esq.
Kolvoord, Overton & Wilson
for International Business Machines Corporation

Barbara S. Brenner, Esq.
Leonard H. Singer, Esq.
James S. King, Esq.
Couch, White, LLP
for International Business Machines Corporation

James A. Dumont, Esq.
Dupont & Lee PC
for American Association for Retired Persons

David Rousse, Chair
for Vermont Electricity Consumers Coalition

David F. Kelley, Esq.
for Vermont Ski Areas Association

David Rapaport, Executive Director

for Vermont Public Interest Research Group

Appendix C: Procedural History

This docket is an investigation of a May 8, 1998, filing of revised tariffs by GMP. The revised tariffs reflected a rate increase of 12.9 percent in base rates, representing an annual revenue increase of $20.8 million, to take effect on a service-rendered basis beginning June 22, 1998. GMP also proposed certain changes in the allocation of costs among customer classes, and therefore in its rate design, including a proposal to eliminate, for all rate classes, the winter-summer rate differential.

A. Early Procedural History

The early procedural history of this case is described in this Board's December 11, 1998, September 7, 1999, December 17, 1999, and January 12, 2000, Orders in this Docket and need not be repeated in detail here.[1] The following is a summary of the most significant events from the beginning of this Docket through January 12, 2000:

- On December 11, 1998, this Board approved a Memorandum of Understanding ("MOU") submitted jointly in this docket by GMP, the Department, and IBM. Consistent with the MOU, this Board stayed this proceeding until September 1, 1999, approved a temporary rate increase of 5.7 percent to take effect with service rendered December 15, 1998, and also approved an additional temporary rate surcharge to raise approximately $670,000 in additional revenue to finance estimated 1999 expenditures for remediation of the Pine Street Barge Canal Superfund Site.[2] Pursuant to the terms of the MOU, GMP's request to redesign its rates was withdrawn.[3]
- On September 7, 1999, this Board approved an amendment to the MOU. Consistent with the amendment, the stay of this proceeding was extended until December 15, 1999, and the temporary rates were continued pending a final order, which was then contemplated to be issued by March 31, 2000. [4]

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1. Order of 12/11/98 at 3–5; Order of 9/7/99 at 2–3; Order of 12/17/99 at 2–4; Order of 1/12/00 at 1–2.

2. This Board's December 11, 1998, Order approved a 5.7 percent temporary rate increase to raise approximately $9,190,000 in additional revenues. On December 15, 1998, the Company filed a compliance filing establishing an increase of 5.52 percent to achieve a revenue target of $8,918,000. This change was made to account for the effect on GMP's pre-existing permanent rates of this Board's Order on Reconsideration in Docket No. 5983. Thus, the actual temporary rate increase implemented by GMP is 5.52 percent, excluding the temporary Pine Street Surcharge. Order of 12/11/98.

3. MOU at ¶ 9.

4. Order of 9/7/99.

- In response to a request by the parties,[5] on August 20, 1999, this Board retained J. Kennedy and Associates, Inc., of Roswell, Georgia, as a consultant to help it analyze the various financial and accounting consequences of current and potential power cost disallowances.
- On December 17, 1999, this Board approved a second amendment to the MOU. Consistent with this amendment, the stay of this proceeding was extended until September 1, 2000, and the temporary rates then in effect were continued and increased by an additional 3 percent.[6]
- On January 12, 2000, this Board approved a stipulation among GMP, the Department, and IBM to implement a rate reduction pursuant to the Memorandum of Understanding and related bilateral agreement that were approved by this Board in Docket 5980. The rate reduction approved by this Board reduced GMP's annual revenues by $2,486,376. This was the same amount as the amount of the Energy Efficiency Utility budget allocated to GMP for the year 2000 plus certain taxes; thus, this action had no material economic significance for the Company. Instead, it merely reflected the transfer of certain duties and costs from GMP to the Energy Efficiency Utility authorized in Docket 5980.[7]

B. Changes in Board Membership

The composition of this Board has changed over the course of this Docket. Throughout the course of this proceeding, David Coen has been a member of the Board presiding over this Docket.

Former Board Member Rude stopped participating in this Board's deliberations on June 30, 2000. On July 10, 2000, she notified this Board that she intended to take extended vacation leave until the second week of August. On August 10, 2000, she tendered to the Governor her resignation from this Board. Also, at her request, on August 10, 2000, the Clerk of this Board informed parties that Ms. Rude had resigned from her position, as of August 10, 2000, and had recused herself from deliberations and decision-making in this and all other dockets pending before this Board.

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5. The Agreement on Joint Request to Hire Experts that was signed by GMP, IBM, the Department, AARP, and the Vermont Public Interest Research Group was admitted into evidence as exh. GMP-43. That agreement asks this Board to hire experts to advise it on various issues arising from a potential GMP bankruptcy.

6. Order of 12/17/99.

7. Order of 1/12/00.

On August 21, 2000, the Clerk of this Board informed parties that former Board Chairman Richard Cowart intended to cease participation on this Board for purposes of continued proceedings in this Docket,[8] and that current Board Chairman Michael Dworkin would be replacing former Chairman Cowart in the continued proceedings in this Docket. At that time, Chairman Dworkin reviewed the prior record in this Docket.

C. Recent Procedural History

On August 22, 2000, this Board held a status conference to discuss the schedule for further proceedings in this Docket.

On September 1, 2000, GMP filed a Supplemental Memorandum of Understanding Regarding GMP's Allowed Costs of Service (referred to herein as the "Supplemental MOU") between the Company and the Department as an exhibit to the Company's prefiled rebuttal testimony. The Supplemental MOU is a settlement of all cost-of-service and rate base issues in this Docket except for GMP's costs of purchasing power pursuant to the HQ-VJO Contract.

On September 7, 2000, this Board adopted a schedule for future proceedings in this Docket.[9]

On September 25, 2000, the Department filed a motion to approve a stipulation that would modify the schedule; the stipulation was signed by the Department, GMP, IBM, and AARP. This Board convened a status conference by telephone on October 2, 2000, to express its concerns about the parties' proposed schedule modifications. During the status conference, the parties agreed to attempt to adjust their proposed schedule to address this Board's concerns. On October 3, 2000, GMP submitted by facsimile a revised proposed schedule to which GMP, the Department, IBM, and AARP all agreed. On October 5, 2000, this Board adopted the revised proposed schedule.[10]

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8. Former Board Chairman Richard Cowart's term on the Public Service Board expired in February 1999. Pursuant to 30 V.S.A. § 3(e), he had continued to serve in a limited capacity as a Board member for the resolution of continuing dockets in which he had personally heard a substantial portion of the evidence. By August 21, 2000, this Docket was the only such docket remaining.

9. Order of 9/7/00.

10. Order of 10/5/00.

On November 13, 2000, GMP and the Department filed a memorandum of understanding (referred to herein as the "Third MOU") which was a comprehensive bottom-line settlement of all their contested issues. The Third MOU's provisions are described in Section IV.E.1.

Rebuttal hearings on the parties' testimony were held from November 20 to 22, 2000, and November 27 through December 1, 2000.

In further response to the joint request from the parties,[11] on November 30, 2000, this Board retained Judd Associates, Inc. to advise this Board on legal issues related to bankruptcy.

On December 8, 2000, GMP asked this Board to admit into evidence a November 27, 2000, report from Moody's Investor Service entitled "Moody's Comments on Rate Settlement Agreement between Green Mountain Power Corporation and Vermont Department of Public Service."[12]

GMP, IBM, AARP, the Department, and VECC filed briefs on December 13, 2000. GMP, IBM, AARP, the Department, and VSAA filed reply briefs on December 18, 2000.

On December 21, 2000, GMP filed a letter, dated December 18, 2000, from Fleet Bank to GMP that discusses the Third MOU and GMP's line of credit with Fleet Bank.

On December 22, 2000, GMP filed a communication from AARP to its members regarding the Third MOU.

On December 26, 2000, GMP filed two power contracts that were signed in the 1991–1992 timeframe. GMP stated that it made this filing in response to a question from Board Member Coen at the November 27, 2000, Technical Hearing.

On January 2, 2000, IBM filed an objection to GMP's December 8, 21, 22, and 26 filings, and requested that this Board reject these filings. On January 3, 2000, AARP filed a similar objection. On January 4, 2000, GMP filed a letter clarifying that it was not asking this Board to admit into evidence its December 21, 22, and 26, 2000, filings.

We hereby decline to admit GMP's December 8, 2000, filing (the rating agency report) into evidence because GMP's request is untimely. GMP originally filed this document with this Board before the close of the technical hearings; if the Company wanted the report to be part of

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11. *See* footnote 5, above.

12. GMP originally filed this document with this Board on November 28, 2000.

the evidentiary record in this case, it should have requested its admission at that time so that the other parties could have responded to it.

Because no party is seeking inclusion of the documents in GMP's December 21, 22, and 26, 2000, filings in the record, there is no need to take any formal action on these filings. However, we do wish to point out that questions from this Board may require the submission of additional information after the close of hearings. If the information submitted is reliable, relevant, and not unfair to any party, we expect it could be admitted.

Appendix D: Third Memorandum of Understanding

[Note: The contents of the Third MOU, filed in this case on November 13, 2000, are reproduced below. For the convenience of the reader it has been incorporated as an appendix to this Order; that process necessitated changes in formatting and pagination. However, the contents and the sequence of the attachments are unchanged from the original.]

THIRD MEMORANDUM OF UNDERSTANDING

This Third Memorandum of Understanding (the "Memorandum" or "MOU") sets forth the Agreement between the Vermont Department of Public Service (the "Department" or "DPS") and Green Mountain Power Corporation ("GMP"), regarding GMP's rate increase request filed in this docket.

1. On May 8, 1998, GMP filed its request for a retail rate increase of 12.9% to produce approximately $20.8 million in additional annual revenues. The Company filed direct testimony and exhibits in support of its request to increase rates on June 29 and July 10, 1998. IBM and the DPS filed direct testimony and exhibits in support of their respective recommendations on September 18 and September 21, 1998. The Public Service Board held hearings on the parties' direct-case filings from October 19, 1998 through October 30, 1998.

2. The Department and GMP and certain other parties in this docket have entered into a series of agreements, known as the Memorandum of Understanding (the "MOU"), dated November 18, 1998, the Amendment of Memorandum of Understanding (the "MOU Amendment"), dated August 12, 1998, and the Second Amendment of Understanding (the "Second MOU Amendment") dated December 3, 1999, to stay the proceedings in this docket, provide for temporary rate increases and impose certain other specified obligations upon the parties. The Board has approved each of these agreements pursuant to orders dated December 11, 1998, September 7, 1999, and December 17, 1999. Pursuant to the agreements and orders, the proceedings in this docket are stayed until September 1, 2000, and the Board's determination of final rates is to be decided on or before January 23, 2001.

3. Since issuance by the Board of its final rate order in Docket No. 5983, on February 27, 1998, GMP has incurred approximately $17.5 million in power supply costs pursuant to the Hydro-Québec/Vermont Joint Owners contract (the "HQ Contract") which have been disallowed and not recovered in GMP's permanent or temporary rates. In December 1998, GMP reduced its common dividend by $0.55 per share, which has had the effect of reducing dividends paid to shareholders since December 1998, by $5.2 million.

4. Since the issuance by the Board of its final rate order in Docket No. 5983 on February 27, 1998, GMP has engaged in, and will continue to pursue a series of efforts to reduce costs of service, including the following:

- GMP has engaged in negotiations with Hydro Quebec ("HQ"), both together with the other Vermont Joint Owners and separately, to renegotiate or terminate GMP's obligations under the HQ Contract.
- In April 1999, GMP disposed of its corporate headquarters facilities at 25 and 35 Green Mountain Drive and relocated headquarters personnel to the Company's service center facilities in Colchester and Montpelier and to other existing Company facilities.
- GMP and the other Vermont Joint Owners have commenced an arbitration under the HQ Contract, founded on the VJOs' claim that HQ breached its obligation under the contract to make the specified level of capacity available to the VJOs at all times (the "VJO-HQ Arbitration"). As a remedy for HQ's breach, the VJOs have requested remedies that include termination of the contract.
- Beginning in the Fall of 1998, GMP began a fundamental re-engineering and internal cost-cutting process that Company management accelerated and intensified in early 1999. This re-engineering process, known as "GMPworks," resulted in a

reduction in the total number of employees from approximately 320 in June 1998 to an anticipated 195 as of December 31, 2000, and has achieved annualized savings of approximately $5 million per year in operating costs.

- In February 1999, GMP entered into a power supply management contract with Morgan Stanley, which currently runs until January 31, 2002, and which, based on current fuel prices, produces power supply cost savings of approximately $2 million per year.
- GMP and other owners of the Vermont Yankee facilities have entered into an agreement to sell Vermont Yankee, subject to regulatory approval by this Board.

5. The undersigned Parties have engaged in extended discussions and review with respect to the testimony and filings in this case. As a result, the undersigned parties agree that an increase in GMP's annual revenues from retail customers of 3.42% over and above the current temporary rate levels, or $6.1 million in revenues in addition to revenues resulting from current temporary rate levels ("the permanent rate increase"), effective with bills rendered on or after January 23, 2001, will result in just and reasonable rates. The parties further agree that the temporary rates allowed by the Board in this proceeding since December 15, 1998 have resulted in just and reasonable rates for the period such temporary rates have been in effect; that such temporary rates should remain in effect through December 31, 2000; and that such temporary rates will result in just and reasonable rates through December 31, 2000. It is the intention of the parties that the temporary rates currently in effect shall become permanent, and that an additional 3.42% rate increase be allowed.

6. GMP's cost of service, rate base, capital structure, and cost of capital are as set forth in Attachment A. The parties accept GMP's proposed cost of service, rate base, cost of capital (Attachment A) and Summary of Revenues under Existing and proposed Rates (Attachment B

hereto) for purposes of this Agreement only, agreeing that they are supported by GMP's and the Department's testimony of record, but only because the overall rate levels established by these Memorandum will be just and reasonable.

7. GMP agrees to write-down on December 31, 2000, for effect in calendar year 2000, the balance at September 30, 2000 for the regulatory asset account known as Deferred State Regulatory Expense. Deferred state regulatory expenses recorded after September 30, 2000, will be amortized over a seven-year period beginning the quarter after they are recorded. GMP will not accrue or recover carrying costs on the unamortized balance during 2001 and 2002. The parties agree that the Company's regulatory asset account balances subject to recovery in this case relating to federal regulatory commission expense, tree trimming, storm damage and the ice storm of 1998 shall continue to be amortized over seven (7) years, beginning January 1999. This Memorandum does not preclude GMP or any other party from advocating or recommending a different amortization period for any regulatory assets in any future proceedings.

8. GMP agrees not to seek to earn a return on any unamortized deferred costs associated with prosecution of the ice storm arbitration over the remaining term of the HQ Contract, unless the ice storm arbitration panel issues an award containing provisions other than the payment of money, which have the effect of materially reducing GMP's cost of service. GMP further agrees that it shall not earn a return on unamortized balances in its regulatory asset entitled "HQ ABC."

9. GMP agrees to discontinue the booking, deferring and recovery of ACE for Energy Efficiency Utility core program savings after December 31, 2001.

10. GMP agrees not to raise its dividend above the current $.55 per share amount until it has obtained new permanent long term debt or equity financing to replace all or substantially all of GMP's short term and intermediate debt, including any bridge loan obtained after approval of this MOU.

11. GMP agrees that, in the event any award issued by the arbitration panel in the pending HQ-VJO arbitration, or any settlement or agreement with Hydro-Quebec or any other party relating to GMP's HQ power supply costs, results in a payment of money to GMP, GMP shall apply any monetary proceeds received, first to reduce the balances of deferred costs associated with prosecution of the ice storm arbitration, if any, and, when the balance of such deferral costs is reduced to zero, then to reduce balances in other regulatory asset accounts as specified by the DPS and approved by the Board. In the event the ice storm arbitration panel issues an award containing provisions other than the payment of money, and which have the effect of materially reducing GMP's cost of service, GMP shall file a petition with the Board to adjust rates to reflect such cost reduction. GMP acknowledges and agrees that its management has a continuing duty to engage in prudent management of GMP's investments and resources, including, without limitation, GMP's power supply resources, including the duty to pursue efforts to achieve cost-effective power supply cost reductions.

12. GMP agrees not to file with the Public Service Board a petition requesting any further increase in retail electric rates prior to April 15, 2002, except that this memorandum shall not preclude GMP at any time from filing a request to increase rates (a) pursuant to 20 V.S.A. § 226(a) in the event of an emergency reasonably deemed by GMP to require a rate increase necessary for the purpose of providing adequate and efficient service or for the preservation of the property of GMP devoted to public use or (b) upon the occurrence of one or more of the following events:

- Aggregate projected power costs for 12 months exceed aggregate budgeted 12-month power costs by $3.75 million, exclusive of changes in load and the associated power cost component of revenues. GMP's aggregate budgeted 12-month power costs for 2001 and 2002 are appended hereto as Attachment D.

- Major non-weather-related loss of customer load resulting in revenue loss materially exceeding supply cost savings.
- Implementation of retail choice.

13. GMP and the Department further agree that in the event of a major storm, power supply interruption or outage in excess of forecasted outage rates relating to Vermont Yankee or Hydro Quebec deliveries, GMP may seek emergency rate relief pursuant to 30 V.S.A. § 226(a) or seek an accounting order from the Board permitting the deferral of costs associated therewith.

14. If GMP's aggregate annual power costs exceed GMP's budgeted power costs for calendar years 2001 or 2002 by more than $2 million, GMP may seek the issuance of an accounting order permitting GMP to book and defer any such excess costs.

15. GMP and DPS acknowledge and agree that the final rates contemplated by this Third MOU include and fully reflect the amount of GMP's reduction in rates for 2001 pursuant to paragraph 22 of the Core Memorandum of Understanding in Docket No. 5980 and paragraph 7 of the Bilateral Agreement Between the Department and GMP in Docket No. 5980. Nothing in this MOU Amendment shall modify or otherwise affect the agreements and obligations set forth in the core Memorandum of Understanding or the Bilateral Agreement Between the Department of Public Service and Green Mountain Power Corporation, executed by the parties and filed by the Department in Docket No. 5980 on April 30, 1999.

16. The parties acknowledge and agree that the final rates contemplated by this Final MOU do not include the recovery of any Pine Street costs and shall not establish a precedent for ratemaking treatment to be applied to past or future Pine Street expenditures incurred or to be incurred by GMP. This Third MOU does not preclude the DPS from asserting that any such Pine Street costs should be "shared" between customers and shareholders, or that customers may be entitled to credits for amounts previously recovered, to the extent necessary to effectuate any

"sharing" of such costs between customers and shareholders pursuant to a final order in any future proceeding before the Board which requires such sharing; nor does this Final MOU preclude GMP from arguing based on any fact, principle of law, equity or regulatory policy to the contrary.

17. GMP has prepared plans for enhanced ROW maintenance and pole testing and treatment in consultation with the Department's engineering staff, that reflect both a proper level of ongoing activity and catching up on the backlog within a reasonable period. These plans call for GMP to expend $2.88 million on enhanced ROW maintenance and pole testing and treatment in 2001. GMP agrees to continue to implement such plans and to maintain an equivalent per year spending level until such plan is implemented. GMP agrees that if the amount actually expended in accordance with the plan for these activities during calendar year 2001 is less than $2.88 million, then the difference shall be applied to reduce a deferral account designated by the Board. The parties acknowledge and agree that GMP will continue to make expenditures on ROW maintenance activities in the normal course. If the Department and GMP are unable to agree on plan implementation issues, this provision shall not preclude the Department from seeking appropriate relief from the Board.

18. GMP agrees to continue to provide the Department with monthly reports describing GMP's actual spending on a year-to-date basis, including GMP's "Level 2/3 Report", and any projected changes to GMP's capital budgets, spending and projects, as well as plans and expenditures related to non-capital maintenance, repair, and refurbishment of transmission & distribution plant, generating plant and ROW maintenance, and to respond promptly and fully to the Department's reasonable requests for information regarding GMP's actual and projected needs and spending for these items, and to permit the Department a reasonable opportunity to provide comments to GMP relating to GMP's actual and projected capital and non-capital

spending. GMP agrees to spend at least the amounts set forth in Attachment E, or such other amounts as GMP and the Department may agree, until further order of the Board. GMP further agrees to consult with the Department with respect to adjustments or updates in its capital spending plan. If the Department and GMP are unable to agree on plan adjustments or updates, this provision shall not preclude the Department or GMP from seeking appropriate relief from the Board.

19. GMP's allowed rate of return on common equity shall be 11.25%. To the extent that GMP's year-end earned return on equity on core utility operations in 2001 exceeds 11.25%, the dollar amount of such excess shall be applied (a) to reduce regulatory asset accounts as specified by the DPS and approved by the Board at the time of any such excess or (b) as otherwise agreed by GMP and the DPS. Any such dollar amount of excess in 2002 or succeeding years over GMP's allowed return on equity in effect in such calendar year also shall be credited as provided herein, unless a superseding approved agreement on rates shall have earlier become effective.

20. GMP shall not, in this or any future proceeding to determine GMP's rates, be subject to any further penalty or disallowance of costs incurred in the purchase of power pursuant to the HQ Contract based on GMP's prudence relating to any act or omission occurring prior to the date of this agreement. The Parties further agree that GMP's share of the HQ/VJO Contract is used and useful.

21. The DPS has requested GMP to develop a plan to eliminate GMP's seasonal rates. Beginning with the first billing cycle following the end of winter rates in the year 2001, GMP's rates shall be adjusted consistent with Attachment F to be the same year round and shall not be seasonally differentiated. Any additional revenues received by GMP in the year 2001 which result from this change in rate design, will be booked and deferred and available as income for use in 2001, 2002 and 2003, unless the excess is depleted sooner, in accordance with an

appropriate accounting order for the purpose of assuring that GMP will earn its allowed rate of return in each of those years. If at the end of 2003 an excess continues to exist, the balance shall be applied to reduce regulatory asset accounts specified by the DPS and approved by the Board at the time.

22. GMP agrees that its performance beginning in 2001 will be measured by the customer service, safety and reliability standards attached hereto as Attachment G.

23. Upon entry of a final, non-appealable order of the Board approving this Third MOU in its entirety, including, without limitation, an order containing the language specified in paragraph 20 above and approving final rates as contemplated herein, GMP and the Department shall execute, and GMP shall file, a stipulation to withdraw and dismiss GMP's appeal to the Vermont Supreme Court from the Board's decisions in Docket No. 5983, in the form attached hereto as Attachment H. Upon filing of this Third MOU with the Board, GMP shall notify the Supreme Court of the terms hereof and GMP and the Department shall jointly request a stay of the appeal pending entry of a Board order approving or disapproving this Third MOU and disposition of any appeal therefrom. In the event the Board declines to approve this Third MOU in its entirety or an approved order is vacated or reversed on appeal, the parties agree jointly to notify the Supreme Court thereof and to request the Supreme Court to terminate any stay of proceedings in the pending appeal.

24. The undersigned parties agree that this Memorandum relates only to these parties and should not be construed by any party or tribunal as having precedential or any other impact on proceedings involving other utilities. The undersigned parties have made compromises on specific issues to reach the agreements set forth in this Memorandum. This Memorandum shall not be construed by any party or tribunal as having precedential impact in this or any future proceeding involving the Parties except as necessary to give full force and effect to the

agreements and undertakings set forth in this Third MOU, to ensure the parties' implementation of this MOU or to enforce an order of the PSB resulting from this MOU.

25. The Parties agree that this Memorandum shall be effective, and shall bind the Parties hereto, only if the Public Service Board issues an order in this docket containing terms consistent with this MOU in all respects.

26. The Parties agree that should the Board fail to approve the MOU in its entirety, the Parties' agreements set forth herein shall terminate and the Parties shall have the right to file additional prefiled rebuttal and surrebuttal testimony on all issues and the Parties' agreements shall not be construed by any party or tribunal as having precedential impact on any future testimony or positions which may be advanced in these proceedings.

[*Signatures on behalf of Green Mountain Power Corporation and the Department of Public Service*]

Attachment A, Schedule 1

	($000)
	PROFORMA BALANCES
COST OF SERVICE :	2000
OPERATING EXPENSES	
PURCHASED POWER	177,554
PRODUCTION	6,276
PUR POWER AND PRODUCTION	183,830
TRANSMISSION	11,039
DISTRIBUTION	4,491
CUSTOMER ACCOUNTING	2,330
CUSTOMER SERVICE AND INFORMATION	0
SALES	0
ADMIN AND GENERAL	10,711
DEPRECIATION/AMORTIZATION	15,944
INCOME TAXES	6,383
TAXES- SUPERFUND	0
TAXES- MUNICIPAL PROPERTY	4,905
TAXES- GROSS REVENUE	1,811
TAXES- HAZARDOUS WASTE	3
TAXES-PAYROLL	586
INTEREST ON CUSTOMER DEPOSITS	0
BILLING CREDITS	0
	0
TOTAL OPERATING EXPENSES	242,033
RETURN ON RATE BASE INVESTMENT	17,715
TOTAL COST OF SERVICE BEFORE CREDIT	259,748
DEDUCT CREDITS	
EQUITY IN EARNINGS OF AFFILIATES	1,961
OTHER ELEC OPERATING REVENUES	3,645
REEP INTEREST INCOME	0
INTEREST DUE FROM CUSTOMERS	0
RESALES	67,179
TOTAL CREDITS	72,784
ALLOCABLE COST OF SERVICE	186,963
LESS: COST ALLOCATED TO WHOLESALE	180
SETTLEMENT ADJUSTMENT	4,267
COST OF SERVICE TO ULTIMATE CUSTOMERS	182,516

Attachment A, Schedule 2

RATE BASE INVESTMENT	13-MO AVE BALANCES (1)	ADJUSTMENT COL3-COL1 (2)	PRO FORMA BALANCES (3)
UTILITY PLANT IN SERVICE	251,831	26,410	278,240.6
CONSTRUCTION WORK IN PROGRESS	17,860	(10,114)	7,746.4
INVESTMENTS IN AFFILIATES			
GENERATION (VT. YANKEE)	9,737	(77)	9,659.9
TRANSMISSION (VELCO)	2,934	(292)	2,642.0
NEHT & NEHTE (HQ TRANSMISSION)	3,007	(447)	2,560.2
SUBTOTAL	15,678	(816)	14,862
UNAMORTIZED V Y AND HQ COSTS			
VY LICENSE EXTENSION	(291)	37	(253.5)
VY 1999 SCHED MAINT	0	954	953.9
VY 1999 SCHED ENERGY	0	222	221.5
VY 1996 SCHED MAINT	1,726	(1,726)	
VY 1996 SCHED ENERGY	1,311	(1,311)	
VY 1998 SCHED MAINT	46	743	788.8
VY 1998 SCHED ENERGY	0	542	541.7
HQ PRIMARY AGREEMENT	4,421	(2,948)	1,473.5
HQ R&D	21	(21)	
HQ 1996 AGREEMENT	2,540	(2,861)	(321.1)
	-	-	
SUBTOTAL	9,774	(6,369)	3,405
OTHER DEFERRED DEBITS			
FROM CUST FOR CIAC	20	(20)	
REEP LOANS	17	(17)	
ESSEX #19 DAM REPAIR	516	(96)	420.5
SCHED A,B&C H-Q	981	(981)	0.0
DEMAND SIDE MGMT	13,489	(7,323)	6,165.5
ACE	1,397	(574)	822.9
PHASE II AC SUPPORT PAYMENTS	128	(73)	54.7
PCB CLEANUP	344	(303)	40.9
LIME ROCK	90	(90)	
REGULATORY ASSETS	0	2,117	2,117.0
ICE STORM OF 1998	0	1,914	1,914.1
T&D STUDY	144	67	210.8
TRANSMISSION INTERCONNECT.	833	(116)	717.0
VERGENNES DAM REPAIR	457	(107)	350.5
CUSTOMER SATISFACTION SYSTEM	118	(90)	28.0
PINE STREET	7,741	280	8,021.3
	26,275	(5,412)	20,863
WORKING CAPITAL ALLOWANCE			
FUEL	1,006	(126)	879.9
MATERIALS AND SUPPLIES	2,480	(210)	2,270.4
PREPAYMENTS	1,185	833	2,017.5
1/8 OPERATING EXP. ALLOW	3,496	(590)	2,906.0
LESS: 1/8 BOND INTEREST EXP	(939)	113	(825.2)
SUBTOTAL	7,228	20	7,249
DEDUCT :			
ACCUMULATED DEPRECIATION/AMORT.	85,272	13,648	98,920.4
CUSTOMER DEPOSITS	603	(316)	287.1
CUSTOMER ADVANCES FOR CONSTRUCTION	(1)	1,606	1,604.9
DEFERRED CREDITS	13,688	869	14,557.4
CONTRACTOR RETENTION	194	(7)	187.1
ACCUMULATED DEFERRED INCOME TAXES	22,102	4,500	26,602.3
SUBTOTAL	121,858	20,301	142,159

TOTAL RATEBASE INVESTMENT:	206,788	(16,582)	190,207

Attachment A, Schedule 3

COST OF CAPITAL

	Invested Capital Per Books	Proforma Adjustments	Invested Capital Proforma	Proportion of Total Percentage	Cost Rate Percentage	Cost of Component Percentage
Debt						
Long Term Debt						
Bonds	94,900.0	(4,700.0)	90,200.0	42.756%	7.665%	3.277%
Debentures	0.0	0.0	0.0	0.000%	0.000%	0.000%
Total Long Term Debt	94,900.0	(4,700.0)	90,200.0	42.756%		3.277%
Bank Loans	5,631.7	0.0	5,631.7	2.670%	5.840%	0.156%
Total Debt	100,531.7	(4,700.0)	95,831.7	45.426%		3.433%
Equity						
Preferred Stock	17,735.0	(1,650.0)	16,085.0	7.625%	7.850%	0.599%
Common Equity	114,377.0	(15,331.6)	99,045.4	46.949%	11.250%	5.282%
Total Equity	132,112.0	(16,981.6)	115,130.4	54.574%		5.880%
Total Capital	232,643.7	(21,681.6)	210,962.1	100.000%		9.314%

Attachment B

V.P.S.B.
Docket No. 6107

Rate	1999 Average No. Of Customers	1999 KWH Sales	Pro Forma Revenue at Current Rates	Pro Forma Revenue at Proposed Rates	Difference	Percent Difference
Residential Rate 01	ERR	512,609,871	$64,316,877.08	$66,516,514.27	$2,199,637.19	3.42%
Optional Rate 11	2,008	22,426,798	$2,619,157.52	$2,708,732.71	$89,575.19	3.42%
Area Lighting Rates 16/18		906,336	$203,438.75	$210,396.36	$6,957.61	3.42%
Time Of Use Rate 61	ERR	8,503,545	$896,490.61	$927,150.59	$30,659.98	3.42%
Total Residential	ERR	544,446,550	$68,035,963.96	$70,362,793.93	$2,326,829.97	3.42%
General Rate 06	10,770	173,444,492	$19,977,076.96	$20,660,293.00	$683,216.04	3.42%
Cable TV Rate 15	400	1,262,554	$143,137.14	$148,032.43	$4,895.29	3.42%
Area Lighting Rates 16/18		4,211,723	$849,016.17	$878,052.53	$29,036.35	3.42%
Public, Street, Highway Lighting Rates 16/18	54	4,694,414	$1,068,060.32	$1,104,587.98	$36,527.66	3.42%
Optional Rate 21	16	4,249,112	$444,810.42	$460,022.93	$15,212.51	3.42%
Time Of Use Power Rate 63	1,326	712,546,050	$64,482,391.02	$66,687,688.80	$2,205,297.78	3.42%
Time Of Use Transmission Rate (tariff billings)	ERR	323,356,179	$21,480,029.17	$22,214,646.17	$734,617.00	3.42%
Total Commercial And Industrial	ERR	1,223,764,524	$108,444,521.20	$112,153,323.83	$3,708,802.63	3.42%
Total Billed	ERR	1,768,211,074	$176,480,485.16	$182,516,117.76	$6,035,632.60	3.42%

[There is no Attachment C]

Attachment D
Page 1 of 4

LONG TERM POWER SUPPLY FORECAST
Annual Summary

RESALES		
-Spot/opportunity/MS contract (D)	0	39
-HQ replacement (E)	5,101	1,443
Total	5,101	1,482
9701		
-HQ 1996 Replacement (E)	11,676	4,257
Net 9701	**6,575**	**2,775**
MWHs	189,460	52,500
cost per MWH	61.63	81.08
HQ Energy price	26.90	27.49
PURCHASED POWER COSTS		
FUEL		
FUEL-WYMAN	1,243	1,013
MWHs	25,103	22,971
cost per MWH	49.50	44.10
-MCNEIL	1,425	1,154
MWHs	31,990	29,273
cost per MWH	44.55	39.43
-MMWEC fuel	8,675	8,080
MWHs	167,081	172,463
cost per MWH	51.92	46.85
-GT/DIESEL	124	31
MWHs	1,335	377
cost per MWH	92.70	80.90
TOTAL FUEL	11,467	10,278
Total MWHs from fuel	225,509	225,084
cost per MWH	50.85	45.66
Power Supply Cost		
-PURCHASES (E)	12,948	9,738
MWHs	241,915	273,773
cost per MWH	53.52	35.57
-SM POWER PROD (E)	13,175	13,281
MWHs	112,102	112,102
cost per MWH	117.53	118.47
Morgan Stanley Credit	(10,788)	
-Wells River (E)	515	515
MWHs	4,997	4,999
cost per MWH	103.00	103.00
-VT.YANKEE (D)	32,196	32,539
(E)	3,124	3,141
Net demand def/amortization	(893)	(1,539)
Net energy def/amortization	(2,200)	83
Total Yankee	32,227	34,224
MWHs	653,473	644,904
cost per MWH	49.32	53.07

Attachment D
Page 2 0f 4

LONG TERM POWER SUPPLY FORECAST
Annual Summary

	2001	2002
FASB5		
-HQ B (D)	17,052	17,052
-HQ C3 (D)	11,748	11,748
-HQ B+C3 (E)	20,213	20,672
-HQ 7.5 M (d)		
-HQ Option Amort	337	337
Total HQ	49,350	49,809
MWHs	748,011	748,538
cost per MWH	65.97	66.54
TOTAL OTHER (D)	1,919	2,050
Joint owner O&M	1,949	1,998
Total power supply	119,336	124,667
MWHs	1,986,006	2,009,399
Total MWHs subject to fuel	467,424	498,857
cost per MWH	56.78	60.64
GMP Hydro MWHs	127,500	127,500
Total with hydro	2,113,506	2,136,899
Projected purchases to meet loads		0
Total loads	2,113,506	2,136,899
Projected retail loads	1,980,200	2,017,100
Rate w		2,946
Firm sales	1,983,146	2,020,046
maket cost $/MWH	0	0
Total Energy Cost	61,442	57,625
Line Losses	0.06	0.05
Average cost per mwh	54.86	60.46

Attachment D
Page 3 of 4

LONG TERM POWER SUPPLY FORECAST
Annual Summary

	2001	2002
Summary		
Resales	(5,101)	(1,482)
9701 Purchases	11,676	4,257
Total HQ	49,350	49,809
Total Yankee	32,227	34,224
Small Producers	13,175	13,281
Other Power supply	4,593	12,303
Fuel	11,467	10,278
Joint Owner O&M	1,949	1,998
Total	119,336	124,667

Reconciliation to Monthly Production Excluding HQ-9701 and Non-Cash Items		
Energy Cost Before Def/Amorts	61,442	57,624
Demand Cost Before Def/Amorts	62,945	63,337
MS Credit	(10,788)	
Net Power Cost	113,599	120,961

Attachment D
Page 4 of 4

GREEN MOUNTAIN POWER CORPORATION
SALES & REVENUE FORECAST

OPERATING REVENUES - 000	2001	2002
RESIDENTIAL-TOTAL GMP	$ 72,714	73,476
COMMERCIAL SMALL-TOTAL	72,659	73,425
COMMERCIAL LARGE-TOTAL	48,897	54,189
ST LIGHTING/PUBLIC AUTH/UNBILLED	1,066	1,923
TOTAL SALES UTL. CUSTOMER	$ 195,336	203,012

ENERGY SALES - MWh	2001	2002
RESIDENTIAL-TOTAL GMP	562,053	567,574
COMMERCIAL SMALL-TOTAL	697,701	702,881
COMMERCIAL LARGE-TOTAL	687,022	691,725
ST LIGHTING/PUBLIC AUTH/UNBILLED	4,357	4,931
TOTAL SALES UTL. CUSTOMER	1,951,134	1,967,110

Attachment E

Green Mountain Power Corporation
Capital Spending

Attachment "E"

Year	Transmission & Distribution	Production, Safety, Environ
2001	$10,600,000	$2,200,000
2002	$12,500,000	$2,900,000
2003	$12,900,000	$2,500,000
2004	$12,300,000	$2,400,000

Capital expenditures are for transmission, distribution, power production, safety and environmental projects.

Attachment F

PLAN FOR ELIMINATION OF SEASONAL RATES FOR
GREEN MOUNTAIN POWER CORPORATION

This Plan sets forth the agreement reached between the Vermont Department of Public Service ("DPS" or the "Department"), and Green Mountain Power Corporation ("GMP" or the "Company")(together, the "Parties"), regarding the implementation of a new rate design for the Company's provision of electric service that eliminates seasonal rates.

1. GMP's present revenue requirement is currently collected in rates for service that are seasonally differentiated for certain component prices. Seasonally differentiated rates were historically implemented to mirror the higher actual cost of providing service during the winter months. For the component prices that are differentiated by season, higher rates are in effect during the "peak season," collected based on 20 normal billing cycles commencing with Cycle No. 1 in each of the months of December through March and lower rates are in effect during the "off-peak season," collected based the normal monthly billing cycles in April through November. This seasonal difference in rates has been in place to reflect generally the higher cost of power during the peak season due to the so-called "NEPOOL 70/30 rule." This rule placed a seventy percent (70%) weight on the one-time annual peak demand of a retail load serving entity for purposes of determining that entity's capability responsibility to the pool.

2. Under new NEPOOL market rules, the capability responsibility formula was revised such that equal weights are now to be placed on the monthly peak of each retail load serving entity for capability responsibility purposes. In the absence of the 70/30 rule, the cost basis that had supported the Company's rate design was eliminated requiring the changes to its rates.

3. With the advent of the new NEPOOL market rules the current seasonal rate structure in Vermont is no longer appropriate.

4. The Department has requested GMP to prepare this Plan calling for elimination of seasonal rates.

5. The new rate design for GMP tariff services called for pursuant to this Plan shall be effective with bills rendered beginning with cycle 01 in April 2001.

6. The proposed deseasonalized rates are designed to be revenue neutral, both on a rate class and forward 12 month annual basis (i.e., on a test year 1999 basis each class of customers will pay rates that result in the same revenues derived from rates in effect on April 1, 2001).

7. GMP shall file compliance tariffs that provide for rates that eliminate seasonal pricing consistent with the terms and conditions of this Plan.

8. Appended hereto are workpapers that show the development of the deseasonalized rates to be implemented pursuant to this Plan.

Page 1 - "Summary Comparison of Monthly Revenues From Seasonal and Levelized Rates"

Page 2 - 4 "Rate Design for Elimination of Seasonal Rates" – The purpose of these workpapers is to show that the proposed rate design is revenue neutral on a 12-month forward-looking basis.

ATTACHMENT F sheet 1

Green Mountain Power Corporation

Rate Design For Elimination of Seasonal Rates

Summary Comparison of Monthly Revenues from Seasonal and Levelized Rates

Rate	1999 Average No. Of Customers	1999 KWH Sales	Pro Forma Revenue at Current Rates	Pro Forma Revenue at Proposed Rates	Difference	Percent Difference
Residential Rate 01	69,353	512,609,871	$64,316,877.08	$64,315,283.70	($1,593.38)	-0.00%
Optional Rate 11	2008	22,426,798	$2,619,157.52	$2,619,175.17	$17.65	0.00%
Area Lighting Rates 16/18		906336	$203,438.75	$203,438.75	$0.00	0.00%
Time Of Use Rate 61	115	8,503,545	$896,490.61	$896,509.81	$19.20	0.00%
Total Residential	71,476	544,446,550	$68,035,963.96	$68,034,407.43	($1,556.53)	-0.00%
General Rate 06	10,770	173,444,492	$19,977,076.96	$19,976,262.82	($814.14)	-0.00%
Cable TV Rate 15	400	1,262,554	$143,137.14	$143,137.14	$0.00	0.00%
Area Lighting Rates 16/18		4,211,723	$849,016.17	$849,016.17	$0.00	0.00%
Public, Street, Highway Lighting Rates 16/18	54	4,694,414	$1,068,060.32	$1,068,060.32	$0.00	0.00%
Optional Rate 21	16	4,249,112	$444,810.42	$444,835.86	$25.44	0.01%
Time Of Use Power Rate 63	1,326	712,546,050	$64,482,391.02	$64,485,119.21	$2,728.19	0.00%
Time Of Use Transmission Rate	1	323,356,179	$21,480,029.17	$21,480,029.17	$0.00	0.00%
Total Commercial And Industrial	12,567	1,223,764,524	$108,444,521.20	$108,446,460.69	$1,939.49	0.00%
Total Billed	84,043	1,768,211,074	$176,480,485.16	$176,480,868.12	$382.96	0.00%

ATTACHMENT F sheet 2

GREEN MOUNTAIN POWER CORPORATION

RATE DESIGN FOR ELIMINATION OF SEASONAL RATES

V.P.S.B. Docket No. 6107

Test Year Ending 12/31/99

Residential Revenue Requirements

Rate Block	Billing Determinants 1/99 - 12/99	Current Rates	Pro Forma Revenues	Levelized Rates (prior to final order)	Pro Forma Revenues	Percent Increase
Rate 01 Bills	832,231	10.90	$9,071,317.90	10.90	$9,071,317.90	0.00%
0 to 200 winter	52,564,145	0.10628	$5,586,517.33	0.10777	$5,664,837.91	1.40%
> 200 winter	145,050,304	0.12558	$18,215,417.18	0.10777	$15,632,071.26	-14.18%
0 to 200 summer	104,862,284	0.10628	$11,144,763.54	0.10777	$11,301,008.35	1.40%
> 200 summer	210,133,138	0.09660	$20,298,861.13	0.10777	$22,646,048.28	11.56%
			$55,245,559.18			
Rate 01 kWh	512,609,871					
Rate 01 Revenues			$64,316,877.08		$64,315,283.70	-0.00%
*	*	*	*	*	*	0
Rate 11 Bills	24,097	12.17	$293,260.49	12.17	$293,260.49	0.00%
0 to 67 winter	520,309	0.10628	$55,298.44	0.18360	$95,528.73	72.75%
> 67 winter	1,419,187	0.26715	$379,135.81	0.18360	$260,562.73	-31.27%
0 to 133 winter	1,080,405	0.10628	$114,825.44	0.08539	$92,255.78	-19.66%
> 133 winter	8,279,010	0.08110	$671,427.71	0.08539	$706,944.66	5.29%
0 to 67 summer	886,998	0.10628	$94,270.15	0.18360	$162,852.83	72.75%
> 67 summer	1,357,300	0.17641	$239,441.29	0.18360	$249,200.28	4.08%
0 to 133 summer	2,097,046	0.10628	$222,874.05	0.08539	$179,066.76	-19.66%
> 133 summer	6,786,543	0.08084	$548,624.14	0.08539	$579,502.91	5.63%
Rate 11 kWh	22,426,798					
Rate 11 Revenues			$2,619,157.52		$2,619,175.17	0.00%
Rate 61 Bills	1,385	12.17	$16,855.45	12.17	$16,855.45	0.00%
0 to 96 winter	43,219	0.10628	$4,593.32	0.14924	$6,450.00	40.42%
> 96 winter	1,544,881	0.19083	$294,809.64	0.14924	$230,558.04	-21.79%
0 to 104 winter	46,863	0.10628	$4,980.60	0.05507	$2,580.75	-48.18%
> 104 winter	1,471,587	0.05768	$84,881.14	0.05507	$81,040.30	-4.52%
0 to 96 summer	86,517	0.10628	$9,195.03	0.14924	$12,911.80	40.42%
> 96 summer	2,693,697	0.12745	$343,311.68	0.14924	$402,007.34	17.10%
0 to 104 summer	93,886	0.10628	$9,978.20	0.05507	$5,170.30	-48.18%
> 104 summer	2,522,895	0.05069	$127,885.55	0.05507	$138,935.83	8.64%
Rate 61 kWh	8,503,545					
Rate 61 Revenues			$896,490.61		$896,509.81	0.00%
Total Residential Kwh	543,540,214					
Total Residential Revenues			$67,832,525.21		$67,830,968.68	-0.00%

ATTACHMENT F sheet 3

GREEN MOUNTAIN POWER CORPORATION

RATE DESIGN FOR ELIMINATION OF SEASONAL RATES

V.P.S.B. Docket No. 6107

Commercial Revenue Requirements

Rate Block	Billing Determinants 1/99 - 12/99	Current Rates	Pro Forma Revenues	Levelized Rates (prior to final order)	Pro Forma Revenues	Percent Increase
Rate 06 Bills	129,239	14.11	$1,823,562.29	14.11	$1,823,562.29	0.00%
kWh winter	57,945,212	0.12654	$7,332,387.13	0.10466	$6,064,545.89	-17.29%
kWh summer	115,499,280	0.09369	$10,821,127.54	0.10466	$12,088,154.64	11.71%
Rate 06 kWh	173,444,492					
Rate 06 Revenues			$19,977,076.96		$19,976,262.82	-0.00%
*	*	*	*	*	*	0
Rate 21 Bills	130	25.82	$3,356.60	25.82	$3,356.60	0.00%
kWh Peak winter	21,284	0.28662	$6,100.42	0.21304	$4,534.34	-25.67%
kWh Off Peak winter	122,143	0.09515	$11,621.91	0.08210	$10,027.94	-13.72%
kWh Peak summer	26,169	0.15320	$4,009.09	0.21304	$5,575.04	39.06%
kWh Off Peak summer	202,427	0.07422	$15,024.13	0.08210	$16,619.26	10.62%
Rate 21 kWh	372,023					
Rate 21 Revenues			$40,112.15		$40,113.18	
Rate 21 (KW) Bills	60	62.55	$3,753.00	62.55	$3,753.00	0.00%
KW Demand winter	3,298	23.6	$77,832.80	16.09	$53,064.82	-31.82%
kwh on peak winter	453,926	0.07101	$32,233.29	0.06948	$31,538.78	-2.15%
kwh off peak winter	1,138,202	0.06518	$74,188.01	0.06280	$71,479.09	-3.65%
KW Demand summer	6,016	11.97	$72,011.52	16.09	$96,797.44	34.42%
kwh on peak summer	687,725	0.06847	$47,088.53	0.06948	$47,783.13	1.48%
kwh off peak summer	1,597,236	0.06110	$97,591.12	0.06280	$100,306.42	2.78%
Rate 21 (KW) kWh	3,877,089					
Rate 21 (KW) Revenues			$404,698.27		$404,722.68	0.01%
Total Rate 21 kwh	4,249,112					
Total Rate 21 Revenues			$444,810.42		$444,835.86	0.01%

ATTACHMENT F sheet 4

GREEN MOUNTAIN POWER CORPORATION
RATE DESIGN FOR ELIMINATION OF SEASONAL RATES

V.P.S.B. Docket No. 6107

Commercial Revenue Requirements
(Cont'd)

Rate 63

	Billing Determinants 1/99 - 12/99	Current Rates	Pro Forma Revenues	Levelized Rates (prior to final order)	Pro Forma Revenues	Percent Increase
Bills	15,911	62.55	$995,233.05	62.55	$995,233.05	0.00%
kW Peak winter	533,747	18.88	$10,077,143.36	12.81	$6,837,299.07	-32.15%
kW Offpeak winter	397,664	2.55	$1,014,043.20	2.55	$1,014,043.20	0.00%
kWh Peak winter (Annual)	139,592,043			0.05641	$7,874,387.15	
kWh Offpeak winter (Annual)	105,390,362			0.04908	$5,172,558.97	
kWh Peak winter (Seasonal)	175,502,943	0.05988	$10,509,116.23			
kWh Offpeak winter (Seasonal)	69,479,462	0.05182	$3,600,425.72			
kW Peak summer	1,217,031	10.16	$12,365,034.96	12.81	$15,590,167.11	26.08%
kW Offpeak summer	919,322	2.55	$2,344,271.10	2.55	$2,344,271.10	0.00%
kWh Peak summer	266,157,137	0.05350	$14,239,406.83	0.05641	$15,013,924.10	5.44%
kWh Offpeak summer	201,406,508	0.04763	$9,592,991.98	0.04908	$9,885,031.41	3.04%
PMD kW Peak winter	132,451	-0.47200	($62,516.87)	-0.32025	($42,417.43)	-32.15%
PMD kW Offpeak Winter	69,992	-0.06375	($4,461.99)	-0.06375	($4,461.99)	0.00%
PMD kWh Peak winter (Annual)	41,561,221			-0.00141	($58,611.71)	
PMD kWh Offpeak winter (Annual)	29,636,668			-0.00123	($36,364.19)	
PMD kwh Peak Winter (Seasonal)	49,972,759	-0.00150	($74,809.22)			
PMD kwh Offpeak winter (Seasonal)	21,225,130	-0.00130	($27,497.16)			
PMD kW Peak summer	312,851	-0.25400	($79,464.15)	-0.32025	($100,190.53)	26.08%
PMD kW Off Peak summer	171,955	-0.06375	($10,962.13)	-0.06375	($10,962.13)	0.00%
PMD kWh Peak summer	60,768,410	-0.00134	($81,277.75)	-0.00141	($85,698.65)	5.44%
PMD kWh Off Peak summer	41,862,735	-0.00119	($49,848.05)	-0.00123	($51,365.58)	3.04%
TOD kW wint	76,816	-0.47098	($36,178.80)	-0.47098	($36,178.80)	0.00%
TOD kW summer	178,741	-0.47098	($84,183.44)	-0.47098	($84,183.44)	0.00%
PF kW winter	4,915	18.88	$92,795.20	12.81	$62,961.15	-32.15%
PF kW summer	16,056	10.16	$163,128.96	12.81	$205,677.36	26.08%
Rate 63 kWh	712,546,050					
Rate 63 Revenues			$64,482,391.02		$64,485,119.21	0.00%

Transmission

	Billing Determinants 1/99 - 12/99	Current Rates	Pro Forma Revenues	Levelized Rates (prior to final order)	Pro Forma Revenues	Percent Increase
Transmission Bills	12	3,336.50	$40,038.00	3,336.50	$40,038.00	0.00%
kW Peak winter	212,436	20.93	$4,446,285.48	12.73	$2,704,310.28	-39.18%
kW Off Peak winter	206,711	2.22	$458,898.42	2.22	$458,898.42	0.00%
kWh Peak winter (Annual)	68,372,859			0.04847	$3,314,032.48	
kWh Off Peak winter (Annual)	72,753,110			0.04088	$2,974,147.14	
kWh Peak winter (Seasonal)	94,560,702	0.04796	$4,535,131.27			
kWh Offpeak winter (Seasonal)	46,565,267	0.04090	$1,904,519.42			
kW Peak summer	484,672	9.14	$4,429,902.08	12.73	$6,169,874.56	39.28%
kW Off Peak summer	459,508	2.22	$1,020,107.76	2.22	$1,020,107.76	0.00%
kWh Peak summer	148,984,170	0.04747	$7,072,278.55	0.04847	$7,221,262.72	2.11%
kWh Off Peak summer	159,814,161	0.04085	$6,528,408.48	0.04088	$6,533,202.90	0.07%
TOD kW winter		-0.51724	$0.00	-0.51724	$0.00	
TOD kW summer		-0.51724	$0.00	-0.51724	$0.00	
Transmission kWh	449,924,300					
Transmission Revenues (rate design only)			$30,435,569.46		$30,435,874.26	0.00%
Actual Tariff Revenues			$21,480,029.17		$21,480,029.17	0.00%
Total Commercial kWh	1,338,122,106					
Total Commercial Revenues			$106,384,307.57		$106,386,247.06	0.00%

Revised Attachment G

GREEN MOUNTAIN POWER
SERVICE QUALITY & RELIABILITY
PERFORMANCE, MONITORING & REPORTING PLAN

Section I: General Provisions

A. The purpose of this plan is to establish performance standards, and performance monitoring and reporting for electric service provided by Green Mountain Power ("GMP" or "the Company") in all its Vermont territories. The plan shall be referred to throughout this document as the "Plan" or "SQRP."

B. The parties to this Plan are GMP and the Vermont Department of Public Service ("DPS").

C. Section II of the Plan establishes performance areas in which GMP agrees to monitor, report and be subject to minimum performance standards. In some cases, the minimum standards are specified in the Plan. In other cases, lack of historical data or the need to modify existing data collection methods will require additional time to negotiate minimum standards. Those minimum standards specifically established in the Plan shall be binding upon GMP for the duration of this agreement. For those areas in which minimum performance standards have not been established in this Plan, the parties agree to establish binding minimum performance standards and any necessary refinements to reporting protocols and methods of data collection no later than March 15, 2001, except as otherwise specifically provided below, which shall be referred to as the "Final Plan" for purposes of this document. The parties further agree that, after March 15, the Vermont Public Service Board ("PSB") may, after opportunity for hearing, impose any minimum performance standards in areas where the parties' negotiations were unsuccessful. On or before March 15, any Final Plan shall be submitted for approval to the PSB, which may, at its discretion, require modification of any performance measures which were not yet established as of the adoption of this Plan.

D. The Final Plan, following negotiation of all performance standards, shall remain in effect for two years from the date of approval by the PSB. Upon conclusion of the two years, the parties agree to adopt a successor plan which may include financial penalties and/or incentives tied to performance. Financial consequences shall be tied to performance-based regulation, if permitted by statute. In the absence of statutory authority, financial consequences shall be tied to GMP's return on equity.

E. Notwithstanding the provisions of Section I, Paragraph D, nothing in this Plan shall preclude the use of any other remedies available under law for addressing substandard performance.

F. In the event that GMP opens it territory to retail choice during the life of this Plan, the parties acknowledge additional and/or different standards may be necessary to monitor service delivery changes attendant to restructured service delivery. The parties agree to negotiate such additional standards should the need arise. Modifications to the Plan under this paragraph shall be submitted to the PSB for approval.

G. Notwithstanding the provisions of Section I, Paragraph D, this Plan and its minimum performance standards to be negotiated in accordance with Section I, Paragraph C shall, to the greatest extent possible, include customer service guarantees permitting the waiver of fees for services not provided on a timely basis. GMP shall file such tariff amendments as are necessary to implement negotiated service guarantees, and such guarantees shall not be effective unless the PSB grants tariff approval.

H. In addition to the performance standards and measurement set forth in this document, GMP agrees to the following time frames for response to consumer and regulatory complaints:

1. GMP shall provide a substantive response to consumer complaints expressed directly to the company within 14 calendar days of receipt by any method of contact.

2. GMP shall provide a substantive response to consumer complaints from DPS within 14 calendar days.

3. If GMP needs additional time to respond fully to a complaint from a consumer or from DPS, the Company shall within the initial 14-day period request a specific additional time for response and shall provide a full resolution within the requested additional time.

<u>Section II: Service Quality and Reliability Performance Areas</u>

GMP's service quality and reliability will be subject to standards in the following performance areas:

A. Call answer performance measures:

1. Percent of customers reaching a company representative within 30 seconds during normal business hours (excluding outage calls).

2. Percent of calls abandoned during normal business hours (excluding outage calls).

3. Percent of calls reaching a busy signal during normal business hours.

4. Percent of outage calls answered (live or automated).

5. Percent of outage calls abandoned.

B. Billing performance measures:

1. Percent of bills not rendered monthly.

C. Meter reading performance measures:

1. Percent of meter readings found inaccurate.

2. Percent of actual meter readings per month.

D. Work completion performance measures:

1. Average days to completion of a line extension from the date the customer is ready.

2. Percent of customer requested work completed on or before promised delivery date.

3. Average delay days for missed appointments.

E. Customer satisfaction measures:

1. Percent of customer satisfied with payment posting.

2. Percent of customer satisfaction following customer-initiated contact with the company (report, request, inquiry, complaint).

3. Percent of customers satisfied following completion of customer requested work.

F. Worker safety performance measures:

1. Reportable worker injuries per thousand miles of primary distribution line.

2. Employee lost days per thousand miles of distribution line.

G. Reliability performance measures:

1. System average interruption frequency, both system-wide and for and each district.

2. Customer average interruption duration, both system-wide and for each district.

<u>Section III: Measurement, and Reporting Protocol</u>

A. GMP shall begin performance monitoring in accordance with this SQRP on April 1, 2001. Reporting periods shall be calendar quarters, with quarterly reports submitted to DPS by the last day of the month following the end of each quarter, except for the standards detailed in Section IV, Paragraphs D1, F and G, which shall be reported annually on a calendar year basis by January 31 of the following year.

B. Except as provided in Paragraph A, performance results shall be aggregated monthly and quarterly, and shall be reported quarterly to the DPS. The parties shall jointly develop an electronic reporting format.

C. Quarterly reports shall include both monthly and quarterly averages. Quarterly averages shall be derived from raw data, not by averaging monthly averages. Achievement of minimum standards shall be determined on the basis of a 12-month rolling average updated quarterly. A minimum performance standard shall be considered met if, in each quarter's reporting, the 12-month rolling average met or exceeded the standard.

D. Notwithstanding Paragraph C, where quarterly performance falls more than ten percent below any standard, or where performance does not meet any standard for two consecutive quarters, GMP shall within 30 days of the end of the quarter in which this provision is triggered, submit a corrective action plan indicating how it will remediate the failed standard.

E. Performance shall be evaluated and reported to one decimal place for all performance areas unless otherwise specified. Actual performance shall be rounded up when the second decimal place is more than 5. GMP shall retain all of its reports that support the results for each of the performance areas for a period of not less than 24 months after the results are reported. GMP shall provide these reports upon request to DPS.

F. GMP shall review with the DPS any change to GMP's measurement protocol or to the internal reporting methods that are used to obtain the data measured prior to GMP's implementation of such changes. If the DPS and GMP are unable to agree on the changes requested, nothing in this Plan shall preclude DPS from seeking appropriate relief from the PSB. GMP shall have an affirmative duty to report missing data or other events that could reasonably affect the quality of the data at the time the Company becomes aware of such events. Any data related to the SQRP reported to DPS that reflects significantly altered measurement procedures or internal data acquisition methods that have not been agreed to between GMP and DPS shall be subject to challenge and potential exclusion from results.

G. GMP may seek a waiver of any applicable performance standard from the PSB. A waiver may only be granted based upon exceptional circumstances. The burden shall be on GMP to demonstrate that its level of preparedness and response was reasonable in light of the cause of the failure.

H. Definitions:

1. Disconnect/Reconnect: Electric power in a location must temporarily be disconnected and reconnected at the customer's request by the physical disconnection of the electric service cable, usually to ensure safety during work being completed at the location.

2. New Line Extensions: One or more poles must be installed to carry a primary distribution circuit; and/or a primary underground distribution circuit must be installed for the purposes of servicing new customer(s).

3. New Service: A primary circuit exists and only a transformer and/or a secondary cable are needed to be installed.

4. Normal Business Hours: "Normal business hours" are 7 a.m. to 7 p.m. Monday through Friday excluding days on which legal holidays are observed and GMP is closed to routine business operations.

5. <u>Street Light Maintenance</u>: GMP makes repairs to GMP-owned outdoor lights (rental units on private property) or municipal lights.

6. <u>Street Light New Installation</u>: GMP installs GMP-owned outdoor lighting at the request of a customer.

7. <u>Temporary service:</u> A secondary service is installed for a customer-specified period of time. Primary conductors exist to the site.

8. <u>Weather-related delays:</u> "Weather-related delays" shall mean any of the following conditions:

   a. As defined by the Agreement as amended between Green Mountain Power Corp and International Brotherhood of Electrical Workers Local #300, Article XVIII, Section D which states:

      > Except in an emergency, the Company will not require employees to do construction or maintenance work in exposed locations out-of-doors during heavy or continuous storms or excessively cold weather, unless such work is necessary to protect life, property or continuity of essential service. In maintaining continuity of employment, the Company reserves the right to determine the type and location of all duties to be performed by outside hourly employees during inclement weather. Such duties will include inside work as is available and which the employee is capable of performing or, when practicable, the time may be devoted to safety, first aid or other instructions.

   b. Periods when roads are impassable to construction vehicles following heavy rain, snow or spring thaw conditions.

   c. Unavailability of crews due to service restoration for outages.

I. GMP and the DPS shall meet regularly to discuss service quality issues, trends in service quality data reported by GMP, issues raised by customer complaints filed with the DPS, and other policy issues relating to customer service. GMP shall initiate these meetings on a periodic basis with a goal of meeting no less than quarterly. Meetings may occur more frequently at DPS discretion. These meetings shall focus on customer service issues raised by customer complaints filed with the DPS and by other communications to the DPS from customers. The intent of these informal meetings is to exchange information in an open and frank atmosphere, to suggest pragmatic solutions, and solve problems.

<u>Section IV: Performance Standards</u>

A. Call answer performance measures:

1. <u>Percent of customers reaching a company representative within 30 seconds during normal business hours (excluding outage calls):</u> This standard tracks the percentage

of attempted calls to reach a company representative during normal business hours that are successful in doing so. It shall be calculated as follows:

$$\frac{\text{Number of non-outage calls reaching a company rep within 30 seconds}}{\text{Number of non-outage attempts to reach a company rep}}$$

The minimum performance standard for this performance area will be determined in accordance with Section I, Paragraph C.

2. Percent of calls abandoned during normal business hours: This standard tracks the percentage of consumer attempts to reach a company representative (excluding outage-related calls) during normal business hours that are abandoned more than 30 seconds after reaching GMPs telephone system, including time in queue. It shall be calculated as follows:

$$\frac{\text{Number of non-outage calls abandoned > 30 seconds}}{\text{Total non-outage calls}}$$

The minimum performance standard for this performance area will be determined in accordance with Section I, Paragraph C, except that in no case shall the resulting standard be more than five percent.

3. Percent of time calls reach a busy signal: This standard tracks the number of minutes in which all trunks are busy, preventing consumer calls from reaching GMP's telephone system. It shall be calculated as follows:

$$\frac{\text{Minutes of all trunks are busy}}{\text{Total minutes}}$$

The minimum performance standard for this performance area will be determined in accordance with Section I, Paragraph C. The standard shall be applied if and only if it is determined that calls to GMP may reach a busy signal.

4. Percent of outage calls answered (live and automated): This standard tracks the percentage of attempted outage-related calls answered live or by the Integrated Voice Response system. It shall be calculated as follows:

$$\frac{\text{Number of outage calls attempted}}{\text{Number of outage attempts reaching a live rep or the IVR}}$$

The minimum performance standard for this performance area will be determined in accordance with Section I, Paragraph C.

5. Percentage of outage calls abandoned: This standard tracks the percentage of outage-related call attempts that are abandoned more than 30 seconds after reaching GMPs telephone system, including time in queue. It shall be calculated as follows:

$$\frac{\text{Number of outage calls abandoned > 30 seconds}}{\text{Total outage calls}}$$

The minimum performance standard for this performance area will be determined in accordance with Section I, Paragraph C.

B. Billing performance measures:

1. Percent of bills not rendered monthly: Percent of bills not rendered monthly: This standard tracks the percentage of bills not rendered monthly. The measurement will exclude: accounts that were activated within 10 days prior to the normal billing cycle; accounts that are scheduled to be final billed within 10 days after the normal billing cycle; sales for resale accounts; station service accounts; company use accounts. This standard shall be reported to the third decimal place. It shall be calculated as follows:

$$\frac{\text{Number of bills not rendered for the billing month}}{\text{Total number of bills rendered for the billing month}}$$

The minimum performance standard for this performance area will be determined in accordance with Section I, Paragraph C.

C. Meter reading performance measures:

1. Percent of meter readings found inaccurate: This standard tracks the percentage of meter readings that were over-read or under-read, regardless of whether the customer or GMP identifies the error. This standard shall be reported to the third decimal place. It shall be calculated as follows:

$$\frac{\text{Number of meter readings found inaccurate}}{\text{Total number of meter readings}}$$

The minimum performance standard for this performance area will be determined in accordance with Section I, Paragraph C.

2. Percent of actual meter readings per month: This standard tracks the percentage of meters actually read each month in relation to the number that were scheduled to be read. It shall be calculated as follows:

$$\frac{\text{Number of meters read}}{\text{Number of meter readings schedule}}$$

The minimum performance standard for this performance area will be separately negotiated by July 1, 2001. Lack of historical data and seasonal influences on performance make it essential to have both winter and summer data to establish baselines. The minimum performance level will be negotiated after reviewing January-June, 2001, data.

D. Work completion performance measures:

1. Average days to completion of line extension from the date the customer is ready: This standard tracks the average number of days from the time the customer is ready for line extension to the actual completion. It will include sub-measures for commercial (commercial/industrial and developments) and residential line extensions. "Not ready" exclusions will include the following conditions that are not the responsibility of GMP: meter socket not installed; meter socket not installed correctly; energizing permit not issued; customer tree trimming not completed; underground conduit/trenching not completed. Weather-related delays will also be excluded. Performance shall be calculated as follows:

$$\frac{\text{Total days to complete line extensions minus exclusions}}{\text{Number of line extensions completed}}$$

The minimum performance standard for this performance area will be separately negotiated by January 1, 2002. Lack of historical data and seasonal influences on performance make it essential to have a full year of data before establishing minimum performance standards, which will be set after reviewing December 1, 2000-November 30, 2001 actual performance.

2. Percent of customer requested work completed on or before promised delivery date: This standard tracks the percentage of jobs resulting from customer requests for work that are completed on or before the promised completion date. Sub-measures include "move in" and "move outs" completed by end of promised day, and "check readings" completed by the end of promised day. Performance shall be calculated as follows:

$$\frac{\text{Number of jobs completed on or before promised date}}{\text{Total number of jobs completed}}$$

The minimum performance standard for this performance area will be determined in accordance with Section I, Paragraph C.

3. Average delay days for missed appointments: This standard tracks the average number of days of delay for the completion of work not completed on the promised date. Work completion to be included in this standard includes "moves in" and "moves out," "check readings," new service, temporary service, disconnects/reconnects, street light maintenance, and street light new installations. Performance shall be calculated as follows:

$$\frac{\text{Total days of delay}}{\text{Total number of delayed jobs}}$$

The minimum performance standard for this performance area will be determined in accordance with Section I, Paragraph C.

E. Customer satisfaction measures:

1. Percent of customer satisfied with payment posting: This standard shall be measured once annually. Using an independent, third-party contractor, GMP shall survey a sample of the company's Vermont customers to assess customer satisfaction with posting and accuracy of charges rendered. This survey may be a part of a larger survey conducted by the company. The wording of the billing question, the explanatory information provided, sample size, and the method of surveying, as well as the minimum performance level, shall be negotiated in accordance with Section I, Paragraph C.

2. Percent of customer satisfaction following customer-initiated contact with the company (report, request, inquiry, complaint): This standard tracks the level of customer satisfaction following direct interaction with a CSR or other company representative resulting from a customer-initiated contact. Using an independent, third-party contractor, GMP shall survey post-transaction a statistically reliable sample of consumers who have contacted the company with a report, request, inquiry or complaint to assess:

   a. Level of satisfaction with the transaction
   b. Level of satisfaction with the company

   The questions, explanatory information, and method of surveying, as well as the minimum performance levels, shall be negotiated in accordance with Section I, Paragraph C.

3. Percent of customers satisfied following completion of customer requested work: This standard tracks the level of customer satisfaction following customer-requested work completed by GMP. Customer requested work includes: "check readings," "move-ins," "move-outs," new service, temporary service, disconnects/reconnects, street light maintenance, and street light new installation. Using an independent, third-party contractor, GMP shall survey post-completion a statistically reliable sample of consumers who have had customer requested work completed by the company to assess:

   a. Level of satisfaction with the work performed
   b. Level of satisfaction with the company

   The questions, explanatory information, and method of surveying, as well as the minimum performance levels, shall be negotiated in accordance with Section I, Paragraph C..

F. Worker safety performance measures:

1. Recordable worker injuries per thousand miles of primary distribution line ("Recordable Injuries"): This standard is defined as the number of OSHA recordable injuries experienced by the company in a calendar year divided by the number of miles of primary distribution line owned by the company measured in the thousands of miles.

$$\text{Recordable Injuries} = \frac{\text{Number of OSHA Recordable Injuries in a Calendar Year}}{\text{Thousands of Miles of Primary Distribution Line}}$$

An OSHA recordable injury is an injury sustained by a company employee, in the course of performing work for the company, that requires medical treatment. Medical treatment is defined as treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel. OSHA recordable injuries are recorded in the company's VOSHA Accident Log that is maintained by the company's Human Resources Department.

The number of primary distribution line miles includes the total of both overhead and underground primary distribution lines, at year's end, as recorded in the company's EOIS database.

The baseline measure for Recordable Injuries for the years 2001 and 2002 shall be 7.4. The standard is met as long as Recordable Injuries do not exceed 7.4 in these years.

2. Employee lost days per thousand miles of distribution line ("Lost Time Injuries"): This standard is defined as the number of employee lost days experienced by the company in a calendar year divided by the number of miles of primary distribution line owned by the company measured in the thousands of miles.

$$\text{Lost Time Injuries} = \frac{\text{Number of Employee Lost Days in a Calendar Year}}{\text{Thousands of Miles of Primary Distribution Line}}$$

Employee lost days are the total number of work days missed by employees resulting from injuries sustained while performing work for the company. Employee lost days are recorded in the company's VOSHA Accident Log that is maintained by the company's Human Resources Department.

The number of primary distribution line miles includes the total of both overhead and underground primary distribution lines, at year's end, as recorded in the company's EOIS database.

The baseline measure for Lost Time Injuries for the years 2001 and 2002 shall be 26.1. The standard is met as long as Lost Time Injuries do not exceed 26.1 in these years.

G. Reliability performance measures:

1. System average interruption frequency ("SAIFI"): This standard is defined in Public Service Board Rule 4.901 and shall be established both system-wide and for each of GMP's Western, Central, and Southern divisions.

The parties acknowledge that the baseline measure is based on a historical data collection method that did not include all outage data. The parties agree to review and adjust if necessary, the system-wide and/or the three-division (Western, Central and Southern) area baseline measures on a quarterly basis through year 2001. The initial baseline measure for system-wide SAIFI for the year 2001 shall be 1.6. The standard is met as long as system-wide SAIFI does not exceed 1.6 in 2001.

GMP and the DPS shall work together to set division SAIFI standards for 2001. Such standards shall be set and filed with the Board no later than March 15, 2001. Similarly, GMP and the DPS shall work together to set both system-wide and district SAIFI standards for 2002. Such standards shall be set and filed with the Board no later than January 15, 2002.

2. Customer average interruption duration ("CAIDI"): This standard is defined in Public Service Board Rule 4.901 and shall be established both system-wide and for each of GMP's Western, Central, and Southern divisions.

   The parties acknowledge that the baseline measure is based on a historical data collection method that did not include all outage data. The parties agree to review and adjust if necessary, the system-wide and/or the three-division (Western, Central and Southern) area baseline measures on a quarterly basis through year 2001. The initial baseline measure for system-wide CAIDI for the year 2001 shall be 2.3 hours. The standard is met as long as system-wide CAIDI does not exceed 2.3 hours in 2001.

   GMP and the DPS shall work together to set division CAIDI standards for 2001. Such standards shall be set and filed with the Board no later than March 15, 2001. Similarly, GMP and the DPS shall work together to set both system-wide and district CAIDI standards for 2002. Such standards shall be set and filed with the Board no later than January 15, 2002.

3. Worst-Performing Areas: Notwithstanding actual system-wide or division performance, GMP shall identify all areas on its system in which SAIFI or CAIDI exceed 250% of the respective system-wide standard. For each such area identified, GMP shall determine if a cost-effective solution exists to improve the area's reliability. For 2002, GMP and the Department shall work together to re-establish worst-performing area targets in an attempt to capture no less than 5% of GMP's customers.

4. Major Storms: Calculation of all SAIFI and CAIDI indices shall be net of outages caused by major storms. A major storm is defined as a severe weather event that satisfies all three of the following criteria:

   A) Extensive mechanical damage to the utility infrastructure has occurred;

   B) More than 10% of the customers in a service territory are out of service due to the storm or the storm's effects; and

C) At least 1% of the customers in the service territory are out of service for at least 24 hours.

Attachment H

IN THE SUPREME COURT OF THE STATE OF VERMONT

Tariff filing of Green Mountain Power)
Corporation requesting a 16.715% rate) Supreme Court Docket Number: 98-296
increase, to take effect July 31, 1997)

NOTICE OF DISMISSAL

Pursuant to Rule 42(a) of the Vermont Rules of Appellate Procedure, the parties hereby agree that this appeal shall be dismissed, with each party to bear its own costs, fees, and expenses.

By: ______________________________________
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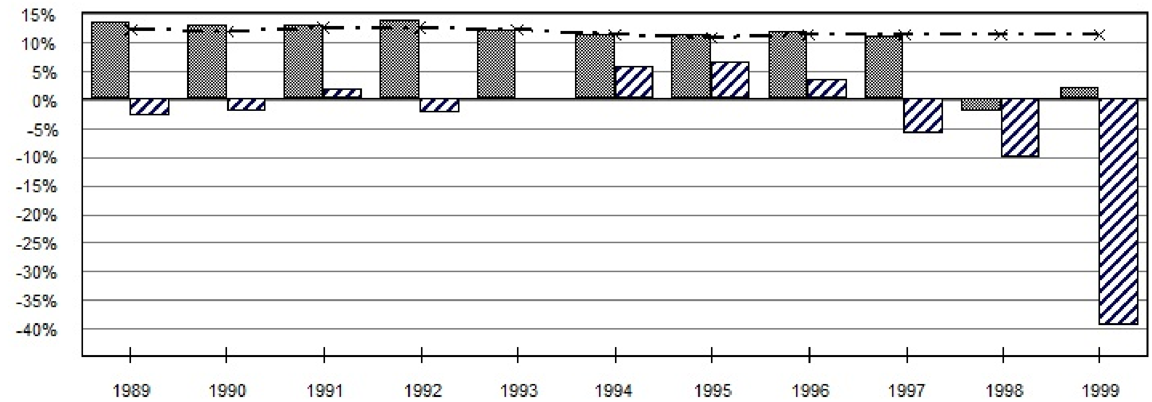
Appendix E.1: Charts of GMP Rate of Return and Earnings

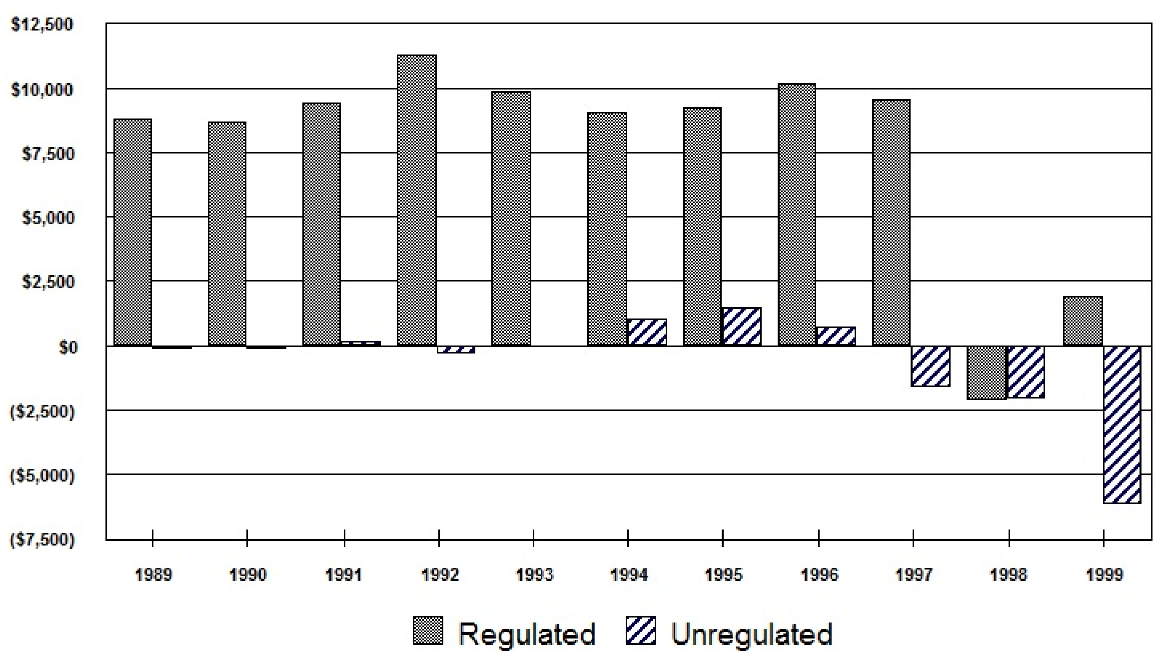
Return On Equity: Regulated and Unregulated



	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Reg'd	13.47%	13.21%	13.18%	13.72%	12.22%	11.42%	11.35%	11.83%	11.05%	-2.32%	2.15%
Allowed	**12.25%**	**12.00%**	**12.50%**	**12.40%**	**12.10%**	**11.30%**	**10.88%**	**11.25%**	**11.25%**	**11.25%**	**11.25%**
Unreg'd	-3.12%	-2.19%	2.00%	-2.45%	-0.27%	5.62%	6.68%	3.38%	-6.14%	-10.16%	-39.46%

Source: Exh. Board - Reb - 2, Page Marked As PSB 1-1(d)

Common Earnings: Regulated and Unregulated
(Dollars In Thousands)



Source: Exh. Board - Reb - 2, Page Marked As PSB 1-1(c)

Appendix E.2: Chart of GMP and Dow Jones Utility Average Ten Year Stock Prices

The above is a slightly modified version of the chart that was admitted as Exhibit Board-Reb-5. The period shown ends on 12/01/2000 instead of 11/27/2000; and it is the actual graphic from BigCharts.com, rather than a print of a web page. This modification has been done solely for the purpose of clarity.