

STATE OF VERMONT  
PUBLIC SERVICE BOARD

EEU-2016-03

2016-2017 Demand Resources Plan Proceeding

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VT PUBLIC SERVICE BOARD

**RESPONSE OF THE DEPARTMENT OF PUBLIC SERVICE TO THE  
CONSERVATION LAW FOUNDATION MOTION TO ALTER AND MOTION FOR  
RELIEF FROM ORDER**

On November 8, 2016, Conservation Law Foundation (“CLF”) filed a Motion to Alter and a Motion for Relief from the October 27, 2016 Order of the Vermont Public Service Board (“Board”) in this proceeding regarding resource-acquisition scenario modeling. The Department of Public Service (“Department”) opposes the motions and urges the Board to deny them on the grounds stated below.

The first ground upon which the Board should deny the motions is procedural. CLF seeks relief from language in the Order that is not the holding and does not serve as a primary basis for the decision contained in Order. The central focus of the Order is the modeling of certain “savings” scenarios, which in turn provide information useful to the Board and participants in arriving at the ultimate budget and savings goals of each of Vermont’s three Energy Efficiency Utilities. The EEUs proposed a variety of scenarios to be modeled, as did CLF, who asked the Board to mandate that ratepayer funds be used to model a scenario exclusively focused on greenhouse gas impacts. The Board denied CLF’s specific request, while acknowledging the importance of this statutory objective, and instead required each of the EEUs “to report GHG emission reductions as an output of each of their scenarios.” *Order at 13*. CLF does not seek reversal of the Board’s decision on scenarios and therefore does not seek an alteration to the Order or relief from the actual ruling that the Order imposed.

Rather, CLF’s motion seeks to have the Board amend its Order to remove a sentence in the Order with which CLF disagrees. The Order states: “As for CLF’s example regarding the potential increased electrification of transportation and thermal loads, we note that the use of EEC funds for investments in such energy-end uses is subject to statutory restrictions...” *Order at 13*. This language is dictum, and is not the basis for the Board’s ruling and CLF has not demonstrated any way in which “relief” from the operation of the Order is necessary. On the contrary this language is a broad legal statement that has no impact on the operation of the Order. CLF’s motion should be denied because CLF is not entitled to the relief it seeks.

The second ground which warrants the denial of CLF’s motions is that the Board’s statement is correct. While the sentence in question is a broad legal statement, unaccompanied by statutory analysis, the Department’s interpretation is that statutory restrictions do in fact limit the use of Electric Energy Efficiency Charge (“EEC”) funds for investments in electrification of transportation and thermal loads. Furthermore, the Department believes there are also statutory restrictions that limit the use of Thermal Energy and Process Fuel (“TEPF”) funds for

investments in electrification of transportation and thermal loads. The Board's statement simply noted that there are restrictions. As will be explained below, this statement is true. The Department outlines these statutory limitations below and provides examples of transportation and thermal loads that may be permitted under the existing statutory restrictions.

### **The use of EEC funds for electrification of transportation is restricted by statute.**

The electrification of transportation is a fuel-switching activity which reduces fossil fuel consumption and increases electric demand. Increasing electric demand with EEC funded measures is at odds with the criteria in 30 V.S.A. sec. 209 d(3)(B) which directs the Board to balance multiple objectives related to decreasing electric demand when setting the EEC<sup>1</sup>. For example, funding the electrification of transportation with the EEC would not reduce the size of the State's future power purchases or proactively limit the need to upgrade the State's transmission and distribution infrastructure. 30 V.S.A. sec. 209 d(3)(B) directs the Board to balance these, along with several objectives related to decreasing electric demand when setting the EEC and restricts using the EEC for electrifying transportation which increases electric demand.

For these reasons, and consistent with the Board's October 27, 2016 Order, the Department asserts that there are fundamental statutory restrictions on using the EEC to fund the fuel switch associated with the electrification of transportation. On the other hand, the Department notes, that transportation related measures that save electricity relative to an established baseline, such as incrementally more efficient electric vehicle charging stations, would be an allowable use of EEC funds.

### **The use of TEPF funds for electrification of transportation is restricted by statute**

30 V.S.A sec. 209 (e)(1) governs Thermal Energy and Process Fuel (TEPF) efficiency funding and 30 V.S.A sec. 2(B) directs the Board to provide for the coordinated development and implementation of programs to thermal energy and process fuels customers. 30 V.S.A sec. 209 2(B)(i) defines "thermal energy" as "the use of fuels to control the temperature of space within buildings and to heat water". There is no mention of transportation within that definition and transportation could not reasonably be included in that definition. While "Process fuels" is not specifically defined by statute; the Department asserts that "process fuels" has long been accepted in the context of Vermont's energy efficiency law as fuels used in commercial and industrial manufacturing processes. CLF admits that there is no "no specific inclusion of transportation end uses..." but contends that "use of fossil fuels for transportation is use of a process fuel, the "process" being transportation." *Motion at 4*. This linguistic sleight of hand is

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<sup>1</sup> 30 V.S.A. sec. 209 d(3)(B) objectives to balance when setting the EEC include "reducing the size of future power purchases; reducing the generation of greenhouse gases; limiting the need to upgrade the State's transmission and distribution infrastructure; minimizing the costs of electricity; reducing Vermont's total energy demand, consumption, and expenditures; providing efficiency and conservation as a part of a comprehensive resource supply strategy; providing the opportunity for all Vermonters to participate in efficiency and conservation programs; and targeting efficiency and conservation efforts to locations, markets, or customers where they may provide the greatest value."

presented without any support whatsoever and should be rejected. The Board, all parties to this proceeding including CLF and all others familiar with the use of the term “Process Fuels” would have to concede that the term has never been interpreted to include transportation. The proper interpretation of the word “process” to mean commercial and industrial manufacturing processes also makes it possible to harmonize the phrase “Process Fuels” with the directive that TEPF programs be implemented on a “whole buildings basis”.

**The use of EEC funds for electrification of thermal loads is restricted by statute.**

While 30 V.S.A. sec. 209 does grant the Board authority to approve the expenditure of EEC funds to reduce fossil fuel use associated with electrifying thermal loads, (specifically ‘space heating’) it does so subject to many restrictions. The legislature gave the Board authority to use EEC funds under certain circumstances subject to specific limitations in 30 V.S.A sec. 209 (d)(3)(C) (i) through viii) also cited below. <sup>2</sup> This section limits the Board’s authorization of the use of funds raised through an energy efficiency charge “to reduce the use of fossil fuels for space heating by supporting electric technologies that may increase electric consumption” to technologies that “after investigation” it finds meets criteria i-vii. The Board has not approved any such technologies.

*The Board may authorize the use of funds raised through an energy efficiency charge on electric ratepayers to reduce the use of fossil fuels for space heating by supporting electric technologies that may increase electric consumption, such as air source or geothermal heat pumps if, after an investigation, it finds that deployment of the technology:*

- (i) will be beneficial to electric ratepayer;*
- (ii) will result in cost-effective energy savings to the end-user and to the State;*
- (iii) will result in a net reduction in State energy consumption and greenhouse gas emissions on a life-cycle basis and will not have a detrimental impact on the environment through other means such as release of refrigerants or disposal. In making a finding under this subdivision, the Board shall consider the use of the technology at all times of year and any likely new electricity demand created by such use;*
- (iv) will be part of a comprehensive energy efficiency and conservation program that meets the requirements of subsections (d)-(g) of this section and that makes support for the technology contingent on the energy performance of the building in which the technology is to be installed. The building's energy performance shall achieve or shall be improved to achieve an energy performance level that is*

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<sup>2</sup> Docket 8311 was opened on 8/1/14 to address the eight screening tests cited above. However, Docket 8311 was closed on 7/1/15 in response to the legislature’s creation of the *Renewable Energy Standard* with an Energy Transformation (Tier III) component (and the subsequent opening of the Board’s Docket 8550). To date, the Board has not approved any measures that pass the screening contained in 30 V.S.A sec. 209 (d)(3)(C) (i through viii).

*approved by the Board and that is consistent with meeting or exceeding the goals of 10 V.S.A. § 581 (building efficiency);*

*(v) among the product models of the technology that are suitable for use in Vermont, will employ the product models that are the most efficient available;*

*(vi) will be promoted in conjunction with demand management strategies offered by the customer's distribution utility to address any increase in peak electric consumption that may be caused by the deployment;*

*(vii) will be coordinated between the energy efficiency and distribution utilities, consistent with subdivision (f)(5) of this section; and*

*(viii) will be supported by an appropriate allocation of funds among the funding sources described in this subsection (d) and subsection (e) of this section. In the case of measures used to increase the energy performance of a building in which the technology is to be installed, the Board shall assume installation of the technology in the building and then determine the allocation according to the proportion of the benefits provided to the regulated fuel and unregulated fuel sectors. In this subdivision (viii), "regulated fuel" and "unregulated fuel" shall have the same meaning as under subsection (e) of this section.*

### **The use of TEPF funds for electrification of thermal loads is restricted by statute**

While one of the main statutory goals established for the use of TEPF funds is to increase thermal efficiency, the use of these funds is nonetheless restricted. 30 V.S.A. sec. 209 2(B) directs that programs for thermal energy and process fuels customers be developed and implemented on a "whole buildings basis". 30 V.S.A. sec. 209 2(B)(i) imposes yet another restriction when it defines "thermal energy" as "the use of fuels to control the temperature of space within buildings and to heat water". Yet another restriction on the use of TEPF funds is the limitation imposed by 30 V.S.A. sec. 209 (e)(2) which requires cost allocations for programs that combine regulated and unregulated<sup>3</sup> fuel funds as follows.

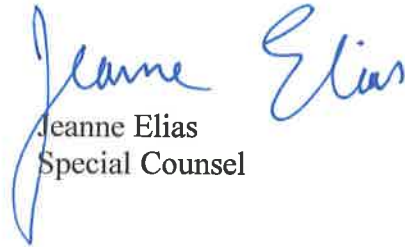
*If a program combines regulated fuel efficiency services with unregulated fuel efficiency services supported by funds under this section, the Board shall allocate the costs of the program among the funding sources for the regulated and unregulated fuel sectors in proportion to the benefits provided to each sector.*

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<sup>3</sup> Regulated and unregulated fuels are defined in 30 V.S.A. sec. 209 (e)(3) (B) and (C) where "Regulated fuels" means electricity and natural gas delivered by a regulated utility and "Unregulated fuels" means fuels used by thermal energy and process fuel customers other than electricity and natural gas delivered by a regulated utility.

In conclusion, the Department requests that the Board deny the CLF Motions to alter or be relieved of the operation of the Board's Order of October 27, 2016 on the grounds identified above.

Respectfully Submitted this 7<sup>th</sup> day of December 2016 at Montpelier, Vermont



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Special Counsel

**cc: EEU 2016-03 Service List (electronic mail only)**