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**I. INTRODUCTION**

This proceeding concerns Central Vermont Public Service Corporation's ("CVPS") proposal to offer a voluntary renewable pricing program (the "Program") to most of its customers. Customers who choose to participate may purchase either 100 percent, 50 percent, or 25 percent of their electric service pursuant to the Program's terms. For each kWh of service requested by a customer pursuant to the Program, CVPS will either:

- acquire and retire a tradable Renewable Energy Certificate ("REC") issued by the NEPOOL Generation Information System ("NEPOOL-GIS") associated with a farm-producer that is located within CVPS's service territory;
- acquire and retire a tradable REC issued by the NEPOOL-GIS associated with a qualifying renewable energy source; or
- if RECs are not sufficiently available from farm-producers or qualifying renewable energy sources, or if acquisition of RECs are required from the NEPOOL-GIS marketplace and the market price of the RECs exceeds four cents per kWh, then CVPS will deposit any remaining funds in the CVPS Renewable Development Fund.

In this Proposal for Decision, I recommend that the Vermont Public Service Board ("Board") approve a Memorandum of Understanding ("MOU") between CVPS and the Vermont Department of Public Service ("DPS") that was filed with the Board on May 28, 2004, with three

minor amendments to which the parties have agreed, and one minor amendment which I have not previously raised with the parties. The MOU states that the Board should approve the Program for bills rendered on and after October 1, 2004 (which means service rendered on and after September 1, 2004), subject to certain conditions. The minor amendments would require CVPS to include four additional items in the report that the MOU requires CVPS to file with the Board and the DPS after the Program has been in operation for one year.

## **II. PROCEDURAL HISTORY**

On March 8, 2004, CVPS filed a petition and supporting materials ("Petition") requesting approval for the Program pursuant to 30 V.S.A. § 8003. Included with the Petition was a proposed CVPS Voluntary Renewable Service Rider which the Company sought approval to include in its Electric Service Tariff, VPSB No. 6 (the "Tariff"). CVPS proposed that the Voluntary Renewable Service Rider become effective for service to voluntary Program participants on or after July 1, 2004, or at such later date as CVPS may determine. This Docket was opened in response to that Petition, and pursuant to 30 V.S.A. § 8, I was appointed Hearing Officer.

A prehearing conference in this Docket was held on April 8, 2004. Appearances were entered by Morris L. Silver, Esq., for CVPS, and Sarah Hofmann, Esq., for the DPS. At the prehearing conference, I adopted a schedule for this proceeding.

On April 22, 2004, I convened a Technical Workshop at which CVPS described its proposed Program and Voluntary Renewable Service Rider, and responded to questions regarding the proposal. The workshop was intended to help parties, potential intervenors, the Hearing Officer and Board staff understand CVPS's proposal.

Subsequent to the filing of the Petition and supporting materials, the DPS investigated the proposed Program and Voluntary Renewable Service Rider and conducted informal discovery of CVPS on issues related to the Program and the Voluntary Renewable Service Rider. I also asked certain questions of the parties regarding the proposals.<sup>1</sup>

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1. Specific Board information requests are set forth in the Docket No. 6933 Prehearing Conference Memorandum dated April 16, 2004. *See also* letter of Morris L. Silver to Susan M. Hudson, Clerk, dated April 27, 2004.

On May 28, 2004, CVPS and the DPS filed the MOU. Attached to the MOU was a revised Voluntary Renewable Service Rider ("Rider").<sup>2</sup> The MOU provides that the Program and Rider should be approved subject to the terms and conditions of the MOU.<sup>3</sup>

Technical Hearings in this matter were convened on June 8 and June 10, 2004. CVPS and the DPS provided testimony in support of the MOU. No party opposed the MOU.

### **III. FINDINGS**

1. The Program is a two-pronged strategy to expand Vermont's renewable energy supply, and meet CVPS's customer demands for voluntary renewable energy service. The Program has two main components: (1) the CVPS Renewable Development Fund; and (2) the Rider. Together, these two components are intended to create a market for new renewable energy generated on Vermont farms through anaerobic digestion of cow manure. These components were designed to establish a direct economic link between Vermont consumers, an improved environment, and the financial health of participating farms, referred to as "farm-producers," located in CVPS's service territory. Dunn pf. at 2–3.

2. The terms and conditions for the Program are set forth in the Rider.<sup>4</sup> Dunn pf. at 5–6; exh. CVPS-DJD-1 at Attachment A; Anderson pf. at 3.

3. Customers who receive service under the Rider will continue to be subject to the rates, terms and conditions of the rate schedule under which they are currently served, as well as the general rules and regulations contained in CVPS's Tariff. Exh. CVPS-DJD-1 at 2 and Attachment A; Anderson pf. at 3; Allen pf. at 2.

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2. The MOU and the Rider were admitted into evidence as exh. CVPS-DJD-1.

3. The MOU provides that it "shall become effective upon the issuance of approval by the PSB in the manner contemplated herein." MOU at ¶ 39.

4. The Rider is appended to this Proposal for Decision as Attachment A.

Eligibility Criteria

4. The Program will be offered to customers taking retail electric service from CVPS under any of its Tariff rate schedules, except street lighting Rates 6 and 7. Exh. CVPS-DJD-1 at 2 and Attachment A; Anderson pf. at 3; Allen pf. at 2.

5. CVPS will not offer the Rider to street lighting customers because: (1) CVPS does not anticipate that municipal entities would elect to choose this service; and (2) Rates 6 and 7 are billed on a dollars per day basis, not on a dollars per kWh basis like the other rate classes. Therefore, it would be harder for customers to determine exactly what they would be paying for this service, since the kWh billing units do not show on the bill like the other rate classes. Anderson pf. at 3.

6. The service provided under the Rider will be voluntary. An interested customer may choose to enroll in the Program at any time once the Rider is in effect. Exh. CVPS-DJD-1 at 2–3 and Attachment A; Allen pf. at 2.

7. Except in the case of a new customer, to be eligible to participate in the Program, an interested customer must have an account that is current (*i.e.*, no past due balance) and must have paid all charges for electric service due during the previous two billing months on time. Exh. CVPS-DJD-1 at 3 and Attachment A.

8. The Rider allows CVPS to require contracts with up to three-year terms for customers who are served under Rates 4, 5, and 10. Customers served under these rates are large and therefore can affect the demand for the Program more than individual residential or small commercial customers. Exh. CVPS-DJD-1 at Attachment A; Anderson pf. at 7.

9. As the Program is currently designed, customers participating in CVPS's budget billing plan would not be eligible to participate in the Program unless they requested removal from the budget billing plan. Similarly, customers participating in the Program would not be eligible to participate in CVPS's budget billing plan. Exh. CVPS-DJD-1 at Attachment A; Anderson pf. at 7–8.

10. The budget billing process by itself is complicated due to three factors: (1) every bill is estimated; (2) Board rules provide several mechanisms for reconciling the estimates and a customer's actual usage; and (3) customers with arrearages may roll these into a 12-month budget

billing plan. As a result, allowing participants in CVPS's budget billing plan to participate in the Program would greatly increase the complexity of the Program's accounting. Tr. 6/10/04 at 18–19 (Frankel); Anderson pf. at 7.

11. In order to minimize the Program's initial set-up costs, it is appropriate to exclude budget billing customers from the Program for the first year the Program is in effect. The question of whether budget billing customers should be allowed to participate in the Program should be revisited in the future. Tr. 6/10/04 at 17, 19 (Frankel).

12. Currently, 13,324 of CVPS's 148,000 customers participate in its budget billing plan. Anderson pf. at 8.

#### Description of the Program

13. Participating customers will be able to purchase 100 percent, 50 percent, or 25 percent of their electric service subject to the terms and conditions of the Rider. Exh. CVPS-DJD-1 at 3 and Attachment A; Dunn pf. at 6; Allen pf. at 2.

14. For each kWh of service requested by a customer under the Rider, CVPS will use the funds in the Cow Power Account to either:

- (1) acquire and retire a tradable REC issued by the NEPOOL-GIS associated with a farm-producer that is located within CVPS's service territory, or
- (2) acquire and retire a tradable REC issued by the NEPOOL-GIS associated with a qualifying renewable energy source, or
- (3) if RECs are not sufficiently available from farm-producers or qualifying renewable energy sources, or if acquisition of RECs are required from the NEPOOL-GIS marketplace and the market price of the RECs exceeds four cents per kWh, then CVPS will deposit any remaining funds in the CVPS Renewable Development Fund.

Exh. CVPS-DJD-1 at Attachment A and page 3 of Attachment C; Dunn pf. at 6; Anderson pf. at 4; Allen pf. at 2.

15. The rate for service under the Rider is 4¢ per kWh. This rate applies only to the portion of a customer's electric service that the customer has elected to purchase pursuant to the Rider. Exh. CVPS-DJD-1 at Attachment A.

16. CVPS will hold the proceeds from the Rider in a separate account referred to as the "Cow Power Account." Exh. CVPS-DJD-1 at page 3 of Attachment C.

17. As used in the Rider, the term "farm-producer" means an electrical generating facility that:

- (1) is located within CVPS's service territory and is owned and operated by a person or entity that is principally engaged in the business of farming as defined in Regulation 1.175-3 of the Internal Revenue Code of 1986;
- (2) utilizes the anaerobic digestion of agricultural products, byproducts or wastes to produce electricity; and
- (3) has an existing contractual relationship with CVPS which establishes compensation for and dispensation of the RECs associated with the farm-producer's generating facility.

Exh. CVPS-DJD-1 at Attachment A.

18. The intent of the Rider is to limit the definition of a "farm-producer" to a generating project operated by a farmer engaged in the "business of farming" as defined in Regulation 1.175-3 of the Internal Revenue Code. As long as a generator that utilizes the anaerobic digestion of agricultural products, byproducts or wastes to produce electricity is owned by a group of farmers or a farmers' cooperative whose owners are engaged in the "business of farming" as defined in the regulation, such generator should be eligible for participation in the Program even where the generating facility is centrally located to serve several farms. Exh. CVPS-DJD-1 at 3–4 and Attachment A; exh. CVPS-DJD-5; Allen pf. at 12.

19. As used in the Rider, the term "qualifying renewable energy source" means an electrical generating facility that satisfies the requirements of 30 V.S.A. § 8002. More specifically, the term is defined in the Rider to mean an electrical generating facility that:

- (1) has received a Statement of Qualification from the Massachusetts Division of Energy Resources certifying that the generating facility meets the requirements of eligibility as a New Renewable Generation Unit, or
- (2) has been approved by the Connecticut Department of Public Utility Control as a qualified Class I Renewable Portfolio Standards Generator.

Exh. CVPS-DJD-1 at 4–5 and Attachment A; Anderson pf. at 6; exh. CVPS-SRA-2; Allen pf. at 3.<sup>5</sup>

20. The MOU recognizes that, in the future, the Massachusetts Division of Energy Resources may amend the requirements for a Statement of Qualification as a New Renewable Generation Unit and that the Connecticut Department of Public Utility Control may amend the requirements for a Class I Renewable Portfolio Standards Generator. Under the terms of the MOU, if either of these events occur, they will not affect the provision of service under the Rider. That is, changes to the two standards will not be considered "unexpected changes" to the tariff. Exh. CVPS-DJD-1 at 5; Allen pf. at 11.

21. The MOU provides that at no time will CVPS acquire or retire RECs in connection with the implementation of this Program that have expired and are no longer suitable for recognition as: (1) a New Renewable Generation Unit by the Massachusetts Division of Energy Resources; or (2) a Class I Renewable Portfolio Standards Generator by the Connecticut Department of Public Utility Control. Exh. CVPS-DJD-1 at 9.

22. As used in the Rider, the term "CVPS Vermont Renewable Development Fund" (the "Fund") means the fund created in accordance with CVPS's Plan for the Use of NEIL Insurance Credit Amounts for the Benefit of CVPS Customers, as approved by the Board in its April 7, 2004, Order in Docket No. 6545. Exh. CVPS-DJD-1 at 5; exh. CVPS-2; Allen pf. at 2.

23. The Fund offers participating farm-producers financial incentives to overcome barriers to the development of electric generating facilities that use the anaerobic digestion of agricultural products, byproducts or wastes to produce electricity. Pursuant to the Rider, Fund activities may include:

- (a) providing grants, loans and other incentives to support farm-producer project development, operation and interconnection of farm generation facilities to CVPS's electric system;
- (b) supporting efforts to commercialize renewable production technologies by farm-producers;

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5. During the Technical Hearings, witnesses referred to RECs that meet these qualifications as "premium" RECs.



- (c) demonstrating and commercializing new clean and renewable technologies for the production of electricity that utilize the anaerobic digestion of agricultural products, byproducts or waste;
- (d) educating potential farm-producers on energy technology and development; and
- (e) overcoming market barriers that prevent farm-producers from developing new renewable generating projects.

Dunn pf. at 3; Allen pf. at 6–7.

### Program Costs

24. The rate for Rider service has been developed so that customers pay a premium relative to the Tariff that otherwise applies to their service. The MOU provides that the 4¢ per kWh rate for service under the Rider is cost-based and reasonably reflects the difference between acquiring the RECs and CVPS's alternative cost of power. This rate:

- is within the range of prices that have been observed for the sale and purchase of RECs in the area subject to regulation by ISO-New England;
- should permit the development of generation facilities by farm-producers; and
- is easy to explain to customers.

Exh. CVPS-DJD-1 at 6; Anderson pf. at 6–7; Dunn pf. at 11, 14.

25. According to the MOU, since the Rider establishes a mechanism whereby amounts not used to acquire tradable RECs are paid over to the CVPS Renewable Development Fund, it is not necessary to: (1) include a rate adjustment mechanism to assure that all Rider payments are used by CVPS for the provision of service under the Program; or (2) fix the rate based on a specific cost of service study. Exh. CVPS-DJD-1 at 6 and Attachment A.

26. There are specific marketing, administrative, and accounting costs associated with the Program. These include the costs of developing brochures, printing, web site maintenance, power bill settlement, REC trading, and certain accounting functions, including processing and reporting of revenues. Rough approximations of labor and costs made to date suggest that the costs are not insignificant in relation to the revenues that are likely to be associated with farm generation. However, these costs estimates are small in relation to CVPS's revenues and are

reasonable in relation to the size of the Program and in relation to the potential resulting benefits. Allen pf. at 5–6; exh. CVPS-DJD-2.

27. The Program will not cause Vermont utilities to be responsible for a share of the annual operating budget associated with administering the NEPOOL-GIS. Anderson pf. at 12–13.

28. CVPS will establish a trading account in order to buy and sell RECs and have them certified and properly accounted for. There are no fees to establish a trading account. Anderson pf. at 13.

29. The MOU provides that the Board should waive the Rule 2.401(C) requirement that CVPS make a filing of estimated revenues and costs for Rider service. Exh. CVPS-DJD-1 at 6.

#### Program Benefits

30. The Program is innovative and will inform the development of future tariffs of a similar character. The Program may serve as a model or a touchstone for voluntary pricing proposals, and holds the potential for expanding the scope and reach of this or similar tariffs over time. Allen pf. at 6.

31. The Program has the potential to provide local air and water quality benefits, which is consistent with the statutory goal of protecting and promoting air and water quality. Dunn pf. at 4–5; 30 V.S.A. § 8001(a)(1).

32. The Program holds the potential to stimulate the development and commercialization of farm generation. This will benefit CVPS's ratepayers and is consistent with the statutory goal of supporting the development of renewable energy and infrastructure in Vermont. Allen pf. at 6; 30 V.S.A. § 8001(a)(3).

33. The Rider focuses on the promotion of renewable generation fueled by the anaerobic treatment of dairy animal waste because:

- (a) the air and water-quality issues associated with animal waste management in Vermont are significant;
- (b) unlike wind generating projects, few proposals for the development of farm generation have been advanced in Vermont;
- (c) the Vermont Agency of Agriculture, Food and Markets supports this technology as an important strategy for farm diversification and environmental quality improvement;

- (d) the anaerobic treatment of dairy farm waste significantly reduces odor and water-quality impacts related to pathogen loading, Biological Oxygen Demand and Chemical Oxygen Demand;
- (e) much of the farm-produced methane is otherwise released into the atmosphere during conventional storage and handling, and methane is a "greenhouse gas" that is reported to be 20 times more harmful than CO<sub>2</sub>; and
- (f) CVPS believes that because these generating facilities will integrate well into the farm landscape, the development of farm generation fueled by the anaerobic treatment of farm waste will raise fewer concerns from neighbors than many other renewable generation projects.

These benefits are primarily local in nature, and a program design that encourages the development of regional renewable energy projects (as opposed to a program such as the one proposed by CVPS that encourages the development of local renewable energy projects) could not offer the same type of enhancements to local air and water quality or promote the development of local renewable energy infrastructure. Dunn pf. at 4–5.

34. The MOU provides that the acquisition of energy and RECs from farm-producers is in furtherance of Vermont state policies that encourage the development of biomass farm generation by farm-producers that utilize the anaerobic digestion of agricultural products, byproducts or wastes to produce electricity. In addition to providing a source for renewable energy that meets the definition contained within 30 V.S.A. § 8002, biomass farm generation also promotes other important local societal goals by helping to diversify Vermont's agricultural economy while improving farm waste management practices. Exh. CVPS-DJD-1 at 4; exh. CVPS-DJD-4; Dunn pf. at 4.

35. All CVPS customers, including those not participating in the Program, are expected to benefit from the Program over time as CVPS explores new ways of advancing the commercialization of more environmentally benign and less volatile sources of electric generation. Non-participating customers may also benefit from avoided transmission wheeling charges and interest on funds held in the Cow Power Account. Allen pf. at 5; tr. 6/8/04 at 74 (Allen); tr. 6/10/04 at 5–6 (Allen).

### Marketing the Program

36. The Rider has been designed to minimize the Program's administrative and marketing expenses. Since the service is provided in the form of the Rider, CVPS can use the same processes and procedures to implement the Program regardless of the participating customer's Tariff rate class, or the percentage of its service that it desires to be subject to the terms and conditions of the Rider. This will also enable CVPS to maximize the value of each customer communication concerning the Program and minimize the costs to be incurred to modify CVPS's billing and customer information systems necessary to administer Rider service. Exh. CVPS-DJD-1 at 6–7; Allen pf. at 8; Dunn pf. at 13–14.

37. Customer communication is crucial in the Program for a number of reasons. If approved, the Program will be the first green pricing program established under 30 V.S.A. § 8003. In breaking new ground and reaching the largest customer base in the state, the Program will inevitably serve as a model for other utilities. Frankel pf. at 2.

38. CVPS has developed an outline of a marketing plan to promote Program participation. According to the outline, CVPS will rely upon a variety of low cost existing media (print and other) to publicize the availability of Rider service. Communication methods planned or likely to be used to communicate with retail customers and/or farmers include:

- CVPS's monthly customer newsletter, which will include stories and registration forms for easy enrollment;
- The CVPS website, [www.cvps.com](http://www.cvps.com), which will include information and a registration form;
- Special CVPS bill inserts;
- On-bill messages;
- Public access television programming (given the commercial nature of "Cow Power," CVPS would focus on the program and its benefits to the farm);
- News releases and media contacts, including radio talk shows;
- Farm-oriented publications;
- Speaking engagements, including talks with community service clubs (Rotary, Kiwanis, etc.), farm organizations and environmental groups;
- Third-party newsletters, such as Chambers of Commerce, Farm Cooperative Newsletters, environmental groups, etc.;

- Brochures aimed at potential farm-producers and distributed through farm groups, Extension System, etc.;
- Future annual meetings and annual reports;
- Presentations to legislators, including key committees and leaders with interest in farm, environmental and energy issues; and
- Public radio underwriting messages.

Other planned marketing tools include:

- A "CVPS CowPower" logo to develop a brand for the service offering; and
- Use of the Vermont Agency of Agriculture's Commissioner's Seal of Quality, which has been authorized.

CVPS's marketing plan also relies on efforts to partner with organizations whose core missions involve renewable energy development. Dunn pf. at 15–16; exh. CVPS-4; exh. CVPS-1.

39. CVPS is pursuing branding strategies so that it can market Rider service to interested customers in a manner that promotes the effective introduction of new renewable resources into the Vermont supply mix. As part of this effort, CVPS has made a servicemark registration application for "CVPS CowPower" with the United States Patent and Trademark Office for use in conjunction with farm generation offered under the Rider. Dunn pf. at 16–17.

40. CVPS has agreed to work with the DPS in the development of customer communications and marketing materials to be used to promote the Rider to customers in order to promote Program participation. Exh. CVPS-DJD-1 at 7; Frankel pf. at 2–3; Allen pf. at 12; Dunn pf. at 17.

41. To the extent that CVPS and the DPS are unable to resolve any disputes that may arise concerning Program-related customer communication and marketing materials, the parties agree to submit the dispute to the Board for resolution. Exh. CVPS-DJD-1 at 7; Frankel pf. at 2–3; Dunn pf. at 17.

#### Customer Protection Provisions

42. Under the terms of the MOU, if a customer who has enrolled in the Program does not pay his or her electric service account within sixty-two (62) days from the date of the bill, the customer will be removed from the Program and his or her account will be retroactively adjusted

to remove the past due charges for Rider service. Any disconnection notice sent to the customer during this period will not include the past due amounts for Rider service. Removal from the Program will be retroactive to the date of the initial past due Rider service amount. As of that date, the customer's account will reflect only past due amounts arising under said customer's underlying electric service tariff rate. In this manner, no past due Rider charges can ever remain on a customer's account beyond 62 days and no customer will be disconnected for past due Rider charges. Exh. CVPS-DJD-1 at 7 and Attachment A; Frankel pf. at 4–7; Allen pf. at 12; Anderson pf. at 17–18.

43. The bills of customers who are enrolled in the Program will be largely indistinguishable by the average person from those of non-Program customers. Two distinguishing features will be a billing code that will identify the person to CVPS, but will not be readily recognizable to customers, and a "billing comment" of up to three lines and 72 characters that can be programmed to acknowledge that an account is enrolled in the Program. Frankel pf. at 8.

44. Under the MOU, at least annually, CVPS will notify Rider service customers that they are participating in the Program and that they are paying a premium for Rider service. The notice will also provide information on how to withdraw from the Rider. Exh. CVPS-DJD-1 at 6; Frankel pf. at 7-8.

45. The MOU provides that if any of the following events occur, CVPS will notify the Board and the DPS of the occurrence of such event:

- a. the amount of uncommitted contributions to the CVPS Renewable Development Fund is expected to exceed \$1 million; or
- b. by July 1, 2006, CVPS has yet to enter into a power purchase agreement with a farm-producer; or
- c. by one year from the effective date of the Rider, less than 100 customers have enrolled in the Program.

CVPS agrees that, upon the issuance of such notice, the Board may reopen this investigation (or open a new investigation) in order to consider whether the Rider should be amended, suspended or closed. Exh. CVPS-DJD-1 at 9–10; Allen pf. at 11.

Farm-Producer Power Purchase Agreement

46. In order to implement the Program, CVPS has developed a model "Farm-Producer Power Purchase Agreement" for use with farm-producers interested in selling energy and Renewable Energy Certificates to CVPS for resale to customers participating in the Program (the "Model Agreement").<sup>6</sup> The MOU provides that CVPS's use of the Model Agreement in conjunction with the Program is reasonable and may be approved; however, the MOU does not address whether the Model Agreement requires approval by the Board. The MOU recognizes that the Model Agreement will have to be modified to reflect project specific negotiated terms and conditions. Exh. CVPS-DJD-1 at 8 and Attachment B.

47. Under the Model Agreement, CVPS will enter into a power purchase arrangement with participating farm-producers whereby CVPS will buy the gross electric output of the generating unit. The farm-producer will deliver to CVPS both the electric output and RECs produced by its farm generation facility. CVPS contemplates that:

Energy delivered pursuant to this Agreement shall be priced at 95 percent (95%) of the Locational Marginal Price of generation asset number \_\_\_ at Node no. \_\_\_ published by ISO New England, Inc. (the "ISO") as reflected in its Settlement Reports published monthly. No payments shall be due hereunder for capacity, Ten Minute Spinning Reserve, Ten Minute Non-Spinning Reserve, Thirty Minute Operating Reserve or Automatic Generation Control regardless of whether Producer delivers such products or services or whether such services are provided or available from the Producer hereunder.

Attachment C of exh. CVPS-DJD-1 at Model Agreement Pricing Provisions.

48. RECs provided under the Model Agreement would be subject to the following purchase terms:

RECs delivered pursuant to this Agreement shall be priced at \$40 per MWh for each MWh of energy delivered hereunder. All rounding for generation of less than 1 MWh shall be subject to the rounding rules as established in the NEPOOL Generation Information System Operating Rules as the same may be amended from time to time. Should Central Vermont not be able to retire said RECs through sales to CVPS customers voluntarily enrolled in the CVPS Voluntary Renewable Service Tariff, as on file with and approved by the Vermont Public Service Board from time to time, Central Vermont shall take all reasonable steps to resell said RECs within the area subject to regulation by the ISO/New England

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6. A copy of this Model Agreement is appended to this Proposal for Decision as Attachment B.

Inc. To the extent that CVPS is able to sell said RECs at a price greater than that provided for hereunder, CVPS shall remit to Producer any excess amounts so collected on account of the sale of said RECs. To the extent that CVPS is able to sell said RECs at a price less than that provided for hereunder, Producer shall receive said lesser amount in accordance with the terms and conditions of the CVPS Voluntary Renewable Pricing Program. When determining whether RECs made available to Central Vermont from Producers participating with CVPS as part of the Voluntary Renewable Service Tariff are retired, CVPS shall retire RECs to Voluntary Renewable Service Tariff sales in the order in which Producers agree to sell power to CVPS pursuant to said Tariff. In other words, RECs shall first be used from the first producer to agree to sell power under the Voluntary Renewable Service Tariff. Next they will be retired on behalf of the second producer to agree to sell power under the Tariff, and then so on until all Tariff sales REC requirements are satisfied in any trading period for the settlement of RECs as determined by the ISO from time to time. CVPS will make its records of the retirement and sale of RECs available for inspection by the Producer during regular business hours upon requests duly made by the Producer from time to time.

Attachment C of exh. CVPS-DJD-1 at Model Agreement Pricing Provisions.

49. The terms and conditions contained in the Model Agreement are subject to final negotiation with interested farm-producers. Dunn pf. at 8.

50. CVPS expects that payment for electricity produced by farm-producers will be settled on a monthly basis. However, payment to the farm-producers for the RECs will not occur until the end of the trading period for those RECs in the NEPOOL-GIS marketplace. As a result, there will be a several-month lag between actual energy production and payment to the farm-producers for the RECs. Anderson pf. at 14–15.

#### Disbursement of Rider Proceeds

51. CVPS has prepared policies governing the disbursement of the Rider proceeds, and related trading guidelines for the purchase of RECs.<sup>7</sup> The MOU provides that these policies to guide CVPS's acquisition of RECs are reasonable and should be approved. Exh. CVPS-DJD-1 at 8–9 and Attachment C; Anderson pf. at 8–10.

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7. These policies and trading guidelines are appended to this Proposal for Decision as Attachment C.



52. As contemplated under the Rider, CVPS will first seek to acquire RECs from participating farm-producers on a first-come first-serve basis. As applicable, CVPS will attempt to bank available RECs from farm-producers between NEPOOL-GIS "Trading Periods." When these RECs are consumed, CVPS will seek to acquire commercially available RECs from other Qualifying Renewable Resources located in Vermont or from the NEPOOL-GIS marketplace. Exh. CVPS-DJD-1 at 8–9, Attachment A and Attachment C.

53. The policies contained in Attachment C to the MOU describe the process by which Rider proceeds are contributed to the CVPS Renewable Development Fund. Exh. CVPS-DJD-1 at 9, Attachment A and Attachment C.

#### Miscellaneous

54. All energy or RECs acquired by CVPS in order to provide Rider service will be incremental to the costs that CVPS would otherwise incur to meet load. In addition, any energy or RECs acquired for Rider service will be incremental to the renewable resources acquired to meet customer needs in accordance with the requirements of 30 V.S.A. § 218c. Exh. CVPS-DJD-1 at 7–8; Dunn pf. at 8–9.

55. The MOU provides that the CVPS Program and Rider should be implemented within the CVPS service territory on the later of October 1, 2004, or the first day of the calendar month falling at least sixty (60) days from the date of Board approval of the Program. Exh. CVPS-DJD-1 at 9; Dunn pf. at 10–11.

56. The MOU provides that, if the Board approves the Program, CVPS will file a conforming final version of the Rider, to be made a part of the CVPS Tariff. CVPS and the DPS agree that the filing of the compliance Rider should become effective without suspension or investigation. Exh. CVPS-DJD-1 at 9.

57. The MOU provides that, one year from the effective date of the Rider, CVPS will file a report with the DPS and the Board outlining the performance of the Rider in the first year of operation (the "First Year Report"). The report will include:

- the number of people served;
- amount of funds flowed into the CVPS Renewable Development Fund;

- the incremental costs incurred in marketing and program administration;
- the number of kW of new electrical generating capacity brought on line by participating farm-producers;
- an estimate of the number of dairy cows whose waste is being processed by participating farm-producers;
- the identification of any barriers to Program success that CVPS has noted; and
- CVPS's recommendations for overcoming those barriers.

CVPS may provide more information if it chooses. If requested by either CVPS or the DPS, the DPS and CVPS will meet to review the Rider in more detail. Exh. CVPS-DJD-1 at 10; Allen pf. at 6.

58. At the Technical Hearing, the MOU parties agreed to enlarge the scope of the First Year Report. Specifically, CVPS agreed to include the following three items in the First Year Report:

- the balance held in the Cow Power Account (on a monthly basis) and an assessment as to whether carrying costs should accrue to the benefit of these balances;
- the amount and type of transmission and distribution avoidance benefits (if any) attributable to the interconnected operation of participating farm generation; and
- the effort that would need to be incurred and the desirability of opening up Rider Tariff service to budget billing customers.

Tr. 6/8/04 at 77–78 (Allen); tr. 6/8/04 at 23–24, 41, 53–54 (Anderson).

#### **IV. DISCUSSION**

In 2003, the Vermont Legislature passed new legislation which authorized the Board to approve the provision of optional, voluntary, renewable pricing programs by electric utilities (30 V.S.A. §§ 8001–8003). The Program is the first voluntary renewable pricing proposal filed with the Board pursuant to this new statute. My review of the MOU focused on (1) whether the Program is consistent with the various statutory requirements for renewable pricing programs; and (2) various public policy issues associated with the Program's design. As discussed further below, I conclude that the Program does meet the statutory requirements for a voluntary renewable pricing program and that the terms and conditions of the MOU, with the modifications agreed to by the parties at the Technical Hearing, and one additional minor modification,

adequately address my concerns regarding the public policy issues associated with the Program's design.

I am also pleased by the MOU's First Year Report requirement. The process contemplated by this requirement should assure that the Program and Rider meet the needs of customers in a manner that addresses the concerns identified in this proceeding. In addition, the requirement provides a forum for refinement of the Program terms and conditions once both CVPS and the DPS have had a year of experience with the provision of voluntary renewable service. Both CVPS and the Department have expressed a willingness to continue to collaborate on program efforts in order to determine if the CVPS proposal can be successfully implemented, and to address concerns and ideas raised by myself and other Board staff. Such future collaborative efforts should be particularly useful given the uniqueness of the Program's design in Vermont.

### **Statutory Requirements**

#### The Definition of a Renewable Pricing Program Under 30 V.S.A. § 8002(1)

I recommend that the Board find that the Program meets the standard for renewable pricing programs set forth in 30 V.S.A. § 8002(1).

30 V.S.A. § 8002(1)(A) defines the term "renewable pricing" as an optional service provided or contracted for by an electric company:

- (i) under which the company's customers may voluntarily either:
  - (I) purchase all or part of their electric energy from renewable sources as defined in this chapter; or
  - (II) cause the purchase and retirement of tradeable renewable energy credits on the participating customer's behalf; and
- (ii) which increases the company's reliance on renewable sources of energy beyond those the electric company would otherwise be required to provide under section 218c of this title.

Pursuant to 30 V.S.A. § 8002(1)(B), a voluntary renewable pricing program may include, but is not limited to:

- (i) contribution-based programs in which participating customers can determine the amount of a contribution, monthly or otherwise, that will be deposited in a board-approved fund for new renewable energy project development;
- (ii) energy-based programs in which customers may choose all or a discrete portion of their electric energy use to be supplied from renewable resources;
- (iii) facility-based programs in which customers may subscribe to a share of the capacity or energy from specific new renewable energy resources.

Under the Program, customers will be afforded the opportunity to voluntarily purchase renewable service by opting to take service under the Rider. This service involves the purchase and retirement of tradeable Renewable Energy Certificates on the participating customer's behalf consistent with the authority established under Section 8002(1)(A)(i).<sup>8</sup> In addition, the renewable resources acquired to meet customer demands under the Program are intended to increase CVPS's reliance on renewable sources of energy beyond those that CVPS would otherwise be required to provide under 30 V.S.A. § 218c, consistent with the requirement of Section 8002(1)(A)(ii).<sup>9</sup>

While the Program utilizes the CVPS Renewable Development Fund as a mechanism for CVPS to address high prices or supply shortfalls affecting its ability to acquire and retire RECs on behalf of participating Rider customers,<sup>10</sup> Section 8002(1)(B) authorizes the Board to approve program designs that include the making of a contribution to a Board-approved fund for new renewable energy project development.<sup>11</sup> In this regard, the authority conferred on the Board is very broad, as the statute indicates the types of optional renewable pricing programs contemplated under Section 8002(1) "may include but are not limited to" the specific models described in the act. I recommend that the Board conclude the Program falls within the statute's definition of a renewable pricing program.

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8. Exh. CVPS-DJD-1 at Second Revised Sheet 40 of Attachment A.

9. Exh. CVPS-DJD-1 at Original Sheet 41b of Attachment A.

10. Exh. CVPS-DJD-1 at Second Revised Sheet 41 of Attachment A.

11. The Board approved the CVPS Renewable Development Fund in its 4/7/04 Order in Docket No. 6545 where the Company proposed to create the fund for the use of Nuclear Electric Insurance Limited Credit amounts. In this Order, I recommend that the Board approve the use of the Fund for the purposes intended under the Rider.

The Definition of Renewable Energy Under 30 V.S.A. § 8002

I recommend that the Board find that the energy resources targeted by the Program meet the definition of "renewable energy" under 30 V.S.A. § 8002.

30 V.S.A. § 8002(2) defines the types of renewable energy resources that could be included in a voluntary renewable pricing program. This statute provides that:

"Renewable energy" means energy produced using a technology that relies on a resource that is being consumed at a harvest rate at or below its natural regeneration rate.

- (A) For purposes of this subdivision (2), methane gas and other flammable gases produced by the decay of sewage treatment plant wastes or landfill wastes and anaerobic digestion of agricultural products, byproducts, or wastes shall be considered renewable energy resources, but no form of solid waste, other than agricultural or silvicultural waste, shall be considered renewable.
- (B) For purposes of this subdivision (2), no form of nuclear fuel shall be considered renewable.
- (C) For purposes of this chapter, the only energy produced by a hydroelectric facility to be considered renewable shall be from a hydroelectric facility with a generating capacity of 80 megawatts or less.<sup>12</sup>

As described in the Rider, the Program is targeted at the acquisition of energy and RECs from farm-producers and other qualifying renewable energy sources. The Rider defines a farm-producer as an electrical generating facility that, amongst other conditions: "utilizes the anaerobic digestion of agricultural products, byproducts or wastes to produce electricity."<sup>13</sup> Also pursuant to the Rider, the term "other qualifying renewable energy resource" means an electrical generating facility that:

- (1) has received a Statement of Qualification from the Massachusetts Division of Energy Resources certifying that the generating facility meets the requirements of eligibility as a New Renewable Generation Unit, or
- (2) has been approved by the Connecticut Department of Public Utility Control as a qualified Class I Renewable Portfolio Standards Generator.<sup>14</sup>

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12. 30 V.S.A. § 8002(2).

13. Exh. CVPS-DJD-1 at Second Revised Sheets 40 and 41 of Attachment A.

14. Exh. CVPS-DJD-1 at Second Revised Sheet 41 of Attachment A. I note that CVPS has committed to seeking declaratory opinions to assure that the farm generation contemplated under the Rider also satisfies the requirements

CVPS has persuaded me that all resources which meet this definition will satisfy the requirements of 30 V.S.A. § 8002(2).<sup>15</sup> Accordingly I recommend that the Board find that all of the resources to be acquired to serve customer demands under the Rider satisfy the requirements for renewable energy resources set out in 30 V.S.A. § 8002(2).

The Requirements Associated with the Use of Tradeable Renewable Energy Credits Under 30 V.S.A. § 8002(3)

I recommend that the Board find that the use of tradeable RECs issued by the NEPOOL-GIS meets the requirements of 30 V.S.A. § 8002(3) regarding the use of "tradeable renewable energy credits."

While the statute authorizes the establishment of voluntary renewable pricing programs that rely on the purchase and retirement of "tradeable renewable energy credits" on behalf of participating customers, the statute does not establish a specific system for issuing and administering renewable energy credits. Rather, the statute authorizes the Board to establish such a system or to approve one legally recognized in another state. Specifically, 30 V.S.A. § 8002(3) defines the criteria for renewable pricing programs that rely on renewable energy credits as follows:

"Tradeable renewable energy credits" means all of the environmental attributes associated with a single unit of energy generated by a renewable energy source where:

- (A) those attributes are transferred or recorded separately from that unit of energy;
- (B) the party claiming ownership of the tradeable renewable energy credits has acquired the exclusive legal ownership of all, and not less than all, the environmental attributes associated with that unit of energy; and
- (C) exclusive legal ownership can be verified through an auditable contract path or pursuant to the system established or authorized by the public service board or any program for tracking and verification of the ownership of

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for participation in the Massachusetts and Connecticut renewable programs referenced above.

15. Anderson pf. at 6.

environmental attributes of energy legally recognized in any state and approved by the board.<sup>16</sup>

A key feature of the Program is the use of RECs generated by the NEPOOL-GIS. As described in its Operating Rules, the NEPOOL-GIS produces an electronic "certificate" for each MWh of energy generated and reported to the system.<sup>17</sup> The Operating Rules establish specific procedures for the creation of certificates for energy produced by NEPOOL and non-NEPOOL generators.<sup>18</sup> These certificates are differentiated by resource type and renewable certificates can be identified by specific certificate field codes.<sup>19</sup> The system also includes account tracking and trading record keeping so that individual certificates can be retired to specific load serving entities' customer loads.<sup>20</sup> This includes safeguards to assure that the party claiming ownership of a certificate has acquired the exclusive legal ownership of all, and not less than all, the environmental attributes associated with that unit of energy.<sup>21</sup>

The NEPOOL-GIS has also been designed to produce oversight reports and reports for regulatory agencies. Safeguards built into the system include the creation of auditable trails and other market monitoring controls to assure the integrity of information produced under the system. One of the key goals of the system is to facilitate the administration of state "attribute laws."<sup>22</sup> Similarly, the NEPOOL-GIS produces quarterly reports that are designed to form the basis for retail load serving entities' filings with state regulatory agencies that administer the relevant attribute laws.<sup>23</sup> Based in part on these safeguards, certificates issued by the NEPOOL-

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16. 30 V.S.A. § 8002(3).

17. Exh. CVPS-5.

18. Exh. CVPS-5 at Part Two.

19. Exh. CVPS-5 at Appendix 2.4.

20. Exh. CVPS-5 at Part Three.

21. Exh. CVPS-5 at Operation Rule 3.3.

22. Exh. CVPS-5 at Operating Rule 4.2.

23. Exh. CVPS-5 at Section 9 of Appendix 1.1.

GIS are used in a number of New England states, including Connecticut and Massachusetts, to ensure compliance with these states' attribute laws.

I am persuaded by CVPS's arguments that, relying upon the NEPOOL-GIS, rather than creating a separate system for the creation of renewable energy credits for use in Vermont renewable pricing programs, is reasonable and will permit the establishment of the Program in a manner that satisfies the requirements of 30 V.S.A. § 8002(3). Accordingly, I recommend that the Board find that the use of tradeable RECs issued by the NEPOOL-GIS meets the requirements of 30 V.S.A. § 8002(3).

#### Tariff Designs and Regulatory Methods Authorized by 30 V.S.A. § 8003

I recommend that the Board find that the Rider uses tariff designs and regulatory methods that are authorized by 30 V.S.A. § 8003.

Upon petition of an electric company brought under 30 V.S.A. § 8003(a), the Board may approve one or more renewable pricing programs for implementation within the petitioning company's service area. This section provides that:

[s]uch programs may include, but are not limited to, tariffs, standard special contracts, or other arrangements whose purpose is to increase the company's reliance on, or the customer's support of, renewable sources of energy or the type and quantity of renewable energy resources available.<sup>24</sup>

As such, Section 8003(a) must be interpreted to authorize a wide array of potential tariff designs and regulatory mechanisms for use in the provision of optional utility renewable pricing programs.

While the mechanisms that can be employed in the provision of renewable pricing programs is broad, Section 8003(c) establishes specific requirements for voluntary renewable tariffs. The relevant portion of this section provides:

Renewable pricing programs may be priced in the form of a premium relative to the tariff that would otherwise apply; provided the premium shall be cost-based, shall reasonably reflect the difference between acquiring the renewable energy and the utility's alternative cost of power, including administrative costs, and shall be adjusted via such periodic adjustment mechanisms, including adjustment clauses,

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24. 30 V.S.A. § 8003(a).



as the board shall approve as part of a renewable pricing program. Any renewable pricing program shall require that any costs of power in excess of the company's alternative cost of power shall be borne solely by those customers who elect to participate in the renewable pricing program.<sup>25</sup>

Moreover, Section 8003(d) defines the requirements that are applicable to renewable pricing programs that use tradeable energy credits. This section states:

Tradeable renewable energy credits (with or without other features), tradeable emissions credits, emission offsets, or other market instruments created or obtained by energy resources acquired pursuant to or as part of a renewable pricing program approved under this section shall be permanently retired by or on behalf of the program's subscribers, and shall not be sold or otherwise disposed of. However, if a program is not fully subscribed, any such instruments created or obtained by the unsubscribed portion of the program may be sold or disposed of at no less than market value if the net proceeds of such sale or disposal are used to reduce the cost paid under the renewable pricing program.<sup>26</sup>

As described in the MOU, the Program uses a tariff Rider, available to nearly all customers, to offer interested participants the opportunity to increase CVPS's reliance on renewable energy.<sup>27</sup> The Rider is priced in the form of a premium relative to the underlying tariff that would otherwise apply. Consistent with the statute's requirements, this premium is cost-based and reasonably reflects the difference between acquiring the renewable energy and CVPS's alternative cost of power, including administrative costs. In addition, any costs of power resulting from the Program that are in excess of CVPS's alternative cost of power will be borne solely by those customers who participate in the Program.<sup>28</sup>

The terms of the Program, including the use of the CVPS Renewable Development Fund as a safety valve, ensure that all customer payments are used for the purposes identified in the

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25. 30 V.S.A. § 8003(c).

26. 30 V.S.A. § 8003(d).

27. Pursuant to 8003(f), renewable pricing programs offered by a company "shall be available to such customer classes as the board may determine." As described in the MOU, CVPS proposes to make its Rider service available to all CVPS customers, except street lighting customers served under Rates 6 and 7. However, to assure compliance with other aspects of Section 8003, CVPS has included special conditions for larger customers to ensure that their exit from the service does not impose costs on other participants or on CVPS's non-participating customers.

28. Tr. 6/8/04 at 73 (Allen).

Rider. As discussed above, those purposes are all authorized under the statute. While the Rider relies on the purchase of RECs for the benefit of participants, those terms also require that the certificates be matched to aggregate participating customer loads and then retired. Moreover, the MOU establishes that CVPS will not acquire "expired" RECs to meet participating customer demands.

Thus I am persuaded that the Program relies on the tariff mechanisms and regulatory methods authorized pursuant to 30 V.S.A. § 8003.

#### Marketing Requirements of 30 V.S.A. § 8003(e)

I recommend that the Board find that CVPS's marketing plan, combined with the terms of the MOU, have been designed to meet the marketing requirements of 30 V.S.A. § 8003(e).

30 V.S.A. § 8003(e) imposes certain obligations on the Board to ensure that optional renewable pricing programs are fairly and appropriately described to customers. Specifically, this section confers authority on the Board to regulate utility representations and disclosures regarding any voluntary renewable pricing program offering. The Section provides:

The board shall ensure that disclosures and representations made regarding renewable pricing programs are accurate, are reasonably supported by objective data, disclose the types of technologies used, whether the energy is Vermont-based or not, and clearly distinguish between energy or tradeable energy credits provided from renewable and nonrenewable sources, and existing and new sources.<sup>29</sup>

In conformance with this Section, CVPS offered into evidence an outline of its plan for marketing the Program to customers.<sup>30</sup> The plan describes CVPS's intention to provide its customers clear and accurate information on the terms and conditions of the Program. Moreover, the MOU provides that CVPS will work with the DPS to develop customer communications to promote the Program. The DPS has identified several communication challenges associated with the Program,<sup>31</sup> and the DPS's expertise in consumer affairs should help CVPS address these

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29. 30 V.S.A. § 8003(e).

30. See exh. CVPS-1 and exh. CVPS-4.

31. See, Frankel pf. at 2–3.

challenges appropriately. To the extent CVPS and the DPS are not able to resolve a dispute concerning customer communications and marketing materials, they will submit the dispute to the Board for resolution.

In addition, the Rider contains an explanation regarding the service to be provided thereunder. As stated on Original Sheet 41a of the Rider:

The actual electricity delivered by the Company under this rate will be indistinguishable from the electricity otherwise supplied by the Company because it is impossible to track the flow of electricity on the regional electric power grid. This is unavoidable because all Customers are served through the same transmission and distribution system. Instead Voluntary Renewable Service is designed to assure that Customer charges for qualifying tradable Renewable Energy Certificates go to pay for such certificates from qualifying renewable sources and farm-producers or are made to the CVPS Renewable Development Fund in accordance with the terms and conditions of this rider.<sup>32</sup>

This explanation should help customers better understand the Program, and the customers' role in purchasing electricity under the Rider. It should also promote, more generally, public understanding of renewable energy sources in Vermont.

The Policy Factors that Must be Taken Into Account By the Board Pursuant to 30 V.S.A. § 8003(g)

30 V.S.A. § 8003(g) directs the Board to consider six policy factors when deciding whether to approve a company's proposed voluntary renewable pricing program.<sup>33</sup> The six factors that the Board must consider are:

- (1) minimization of marketing and administrative expenses;
- (2) auditing or certification of sources of energy or tradeable renewable energy credits;
- (3) marketing and promotion plans;
- (4) effectiveness of the program in meeting the goals of promoting renewable energy generation and public understanding of renewable energy sources in Vermont;

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32. Exh. CVPS-DJD-1 at Original Sheet 41a of Attachment A.

33. The statute does not require the Board to make specific findings regarding any of these factors.

- (5) retention by the program of renewable energy production incentives, tax incentives and other incentives earned or otherwise obtained by energy resources acquired pursuant to or as part of a renewable pricing program approved under this section to reduce the cost of any premiums paid under this section; and
- (6) costs imposed on nonparticipating customers arising on account of the implementation of the voluntary renewable pricing program.<sup>34</sup>

In consideration of these factors, CVPS has incorporated a variety of features into the Program's design. To minimize marketing and administrative expenses, CVPS proposes to make the service available under a single tariff Rider. This should help CVPS maximize the value of its customer communications, minimize the need for a variety of promotional materials, and limit the costs of adapting CVPS's billing system to accommodate the Program. Moreover, CVPS proposes to rely on the use of RECs so that accounting for the Program can be accomplished utilizing the existing NEPOOL-GIS, thus avoiding the need to recreate a system for issuing and accounting for renewable energy credits. In addition, the Program's use of the Fund as a "safety valve" avoids the need for complicated rate adjustment mechanisms that may be necessary due to the state of the market for RECs within New England. Thus I am persuaded that the Program's design appropriately tries to minimize administrative expenses.

As previously described, the Program will use the existing NEPOOL-GIS to certify the sources of RECs to be acquired on behalf of participating customers, and to establish necessary auditing and reporting mechanisms. Within New England, this system is the "gold standard" for energy resource attribute reporting. I recommend that the Board conclude that the use of the NEPOOL-GIS system adequately addresses the intent of 30 V.S.A. § 8003(g)(2) that renewable pricing programs utilize auditable means to assure that renewable energy credits come from accredited sources and that the trading system has high integrity.<sup>35</sup>

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34. 30 V.S.A. § 8003(g).

35. I am cognizant of the fact that the NEPOOL-GIS has some difficulty accounting for the environmental attributes associated with resources imported from regions outside of NEPOOL and that, as a result, participants in the Board's disclosure collaborative urged that energy disclosure and reporting requirements be deferred until these issues are resolved by NEPOOL. While these problems still persist, I still conclude that the NEPOOL-GIS system is appropriate to use in conjunction with the Program for the reasons discussed above.

CVPS has developed marketing and promotion plans for the Program<sup>36</sup> and, as discussed above, the MOU includes specific provisions related to the development of marketing materials. As set out in the CVPS customer survey that is ex. CVPS-3, an important segment of CVPS's customers are very interested in increasing their reliance on renewable energy sources.<sup>37</sup> CVPS's marketing plan uses low-cost methods of reaching those customers, and includes efforts to brand generation produced by farm-producers as "CVPS CowPower." CVPS asserts that it has identified an effective strategy to promote participation in the Program, and I recommend that the Board conclude that CVPS has appropriately considered how to market and promote the Program.

When CVPS set out to develop the Program, it developed a mission statement to guide its designs. As set out in CVPS's marketing plan:

Central Vermont Public Service has developed a two-pronged strategy to expand Vermont's renewable energy supply, and meet customer demand:

- The CVPS Renewable Development Fund, and
- The CowPower Tariff.

Together, these two components create a market for new, renewable energy generated on Vermont farms through anaerobic digestion of cow manure.

They create a direct economic link between Vermont consumers, an improved environment, and the financial health of participating farms in CVPS's territory.<sup>38</sup>

Also as described in the marketing plan, the goals and objectives for the Program are as follows:

- Promote economic activity within Vermont;
- Partner with related renewable programs;
- Ensure ease of administration and enrollment through program design; and
- Impose no additional costs or risks on non-participants (utility or customers).

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36. Exh. CVPS-1 and ex. CVPS-4.

37. Three-quarters of the respondents in CVPS's market research customer survey stated that they would be willing to pay an additional cost for renewable electricity generated from farm by-products if it provided significant environmental benefits to air and water quality, and if it provided significant economic benefits to Vermont farmers. Dunn pf. at 13.

38. Exh. CVPS-1 at 2-3.

In part, the Program focuses on the development of generation by farm-producers because CVPS believes that this strategy will show how renewable resource development can fit within the Vermont community while helping to further a convergence of public policy objectives (*e.g.* renewable resources, environmental protection and economic development). When taken together, CVPS maintains that the proposed mission statement and program goals demonstrate CVPS's commitment to the development of an effective renewable pricing program that meets the dual goals of promoting renewable energy generation and minimizing or eliminating the imposition of costs on nonparticipating customers as established under 30 V.S.A. §§ 8003(g)(4) and 8003(g)(6). I am persuaded by these arguments.

As of the date of the Technical Hearings in this proceeding, CVPS had not identified energy production tax incentives or other benefits that could be garnered for program participants and shared through its proposed Program design. However, since some of the funds derived by customers under the Program will go toward renewable resource development, CVPS will be cognizant that such benefits should be used to minimize Program costs. As more information becomes available, or incentives or other tax savings strategies are identified, CVPS has committed to pursue the development of guidelines for the Program to assure that these benefits, to the extent practicable, flow back to customers. Given this commitment, I recommend that the Board conclude that CVPS has adequately considered the policy factor set out at 30 V.S.A. § 8003(g)(5).

Lastly, several of the Program's features are designed to minimize or eliminate the costs to be imposed on nonparticipating customers on account of the introduction of the Program. As described in the model "Farm-Producer Power Purchase Agreement" that is Attachment B to the MOU, CVPS proposes to purchase power and RECs at market based prices.<sup>39</sup> This should mean that any incremental energy acquired under the Program can be resold into the wholesale power market without imposing incremental costs on CVPS. Moreover, in its policies for the disbursement of the funds in the Cow Power Account and related trading guidelines for the purchase of RECs (appended to the MOU as Attachment C), CVPS has identified specific management strategies for the administration of Rider service that are designed to not only limit

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39. Exh. CVPS-DJD-1 at Attachment B.

costs for nonparticipants, but for participating customers as well. When CVPS's plans for the delivery of the Program are considered as a whole, they portray an integrated system that has been designed to minimize costs and ensure that nonparticipating CVPS customers are not burdened by the Program, as contemplated under section 8003(g)(6).

For the reasons articulated above, I recommend that the Board conclude that the Program and related Rider adequately address the policy factors that must be taken into account by the Board pursuant to 30 V.S.A. § 8003(g).

### **Various Public Policy Issues**

After my initial review of the Program's design and the MOU's terms and conditions, I had questions for the parties regarding three additional public policy concerns: (1) should interest be accrued on the funds in the Cow Power Account; (2) should budget billing customers be able to participate in the Program; and (3) should customers participating in the Program receive the benefit of any avoided transmission wheeling charges resulting from CVPS's purchase of electricity from farm-producers. Since this initial review, the parties have satisfied my concerns in these three areas. However, I believe the issues to be significant enough to deserve some discussion.

In addition, subsequent to the Technical Hearings, I realized that it would be helpful for the Board to have information regarding CVPS's REC trades in the NEPOOL-GIS marketplace resulting from the Program. This issue is discussed further below.

#### Interest on Funds Accrued in the Cow Power Account

The Program does not provide for the accrual of interest on balances held in the Cow Power Account.<sup>40</sup> I questioned whether this policy is appropriate, or whether such balances should accrue interest so that Program participants receive the full benefits associated with the Program.

CVPS explained that the Cow Power Account is not expected to have large balances for significant periods of time. Rather, it is expected that the Account will be largely cleared every

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40. Interest will be accrued on funds held in the CVPS Renewable Development Fund.

quarter when RECs are traded, and it is certain that the Account will be completely cleared at the end of every program year, when any remaining funds in the Account are transferred to the CVPS Renewable Development Fund.<sup>41</sup>

If the expectation that the Cow Power Account will not have large balances for significant periods of time is correct, then it is reasonable to me that balances in the Cow Power Account not accrue interest.<sup>42</sup> However, given the fact that the Program is a new service, it is unclear to me whether reality will match CVPS's expectation. To address this concern, CVPS and the DPS agreed to the inclusion of the monthly balances in the Cow Power Account in the First Year Report that is required by the MOU. This information will enable the parties and the Board to verify that it is acceptable for balances in the Cow Power Account to accrue interest, or to determine that the issue should be revisited. Therefore, with this modification to the MOU, I am persuaded that the issue is appropriately addressed.

#### Transmission Wheeling Benefits

It is important to me that the Program be fair to both participants and non-participants. As discussed above, this includes the minimization of costs to non-participants, but also the provision of potential benefits, to the largest practical extent, to Program participants.

One benefit that could result from the Program is reduced transmission wheeling charges due to the power purchases CVPS will make from farm-producers. CVPS has asserted that it expects these benefits to be modest.<sup>43</sup> As with the accrual of interest on the Cow Power Account, if CVPS's expectation turns out to be correct, I am persuaded that it is reasonable for the Program to not flow the benefits of reduced transmission wheeling charges to Program

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41. Tr. 6/8/04 at 22–23 (Anderson).

42. If the interest amounts would truly be *de minimus*, the administrative costs associated with accounting for such amounts could exceed the benefits associated with tracking the amounts. If the interest amounts would exceed the costs of accounting for them, but are still quite small, an argument could be made that any interest earned on small Cow Power Account balances could function as an offset to the Program's administrative costs. That is, CVPS, as a company, will be paying a small amount of the Program's administrative costs, and the interest earned on the Cow Power Account could be thought of as paying for some of those expenses.

43. Anderson pf. at 13.



participants. However, given the Program's newness, it is unclear to me whether CVPS's expectation will be correct.

CVPS and the DPS agreed to the inclusion of information on the value of the avoided transmission wheeling charges in the First Year Report so as to verify the parties' expectations. This information will enable the parties and the Board to determine whether the Program's treatment of transmission wheeling benefits is appropriate. As a result, with this modification to the MOU, I am persuaded that the issue is appropriately addressed.

### Budget Billing Customers

As discussed in Findings 9 – 12, above, budget billing customers may not participate in the Program, as it is currently designed. I am persuaded that the accounting associated with allowing budget billing customers to participate in the Program is more complicated than accounting for other CVPS customers. For this reason, I am convinced that, in the interest of minimizing Program start-up costs, it would be appropriate to exclude budget billing customers from the Program at the present time.

Nevertheless, both CVPS and the DPS have expressed a desire to extend the Program to budget billing customers at a more appropriate time.<sup>44</sup> The parties have also agreed in the MOU to review the Program after it has been in operation for a year. However, while Paragraph 38 of the MOU lists several items that will specifically be reported on, the issue of whether the Program should be opened up to budget billing customers is not mentioned. I conclude that it is appropriate for this issue to be specifically examined over the next year and addressed in the First Year Report. I am pleased that CVPS and the DPS have agreed to modify the MOU so that CVPS will include information in the First Year Report on the effort that would need to be incurred, and the desirability of opening up the Program to budget billing customers.

### REC Trades

If the number of RECs available from Vermont farm-producers is less than the number CVPS needs to acquire under the terms of the Program, CVPS will attempt to acquire and retire

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44. Anderson pf. at 8; tr. 6/10/04 at 17–18 (Frankel).

certain "premium" tradeable RECs issued by the NEPOOL-GIS. Similarly, if the number of RECs available from Vermont farm-producers exceeds the number CVPS needs to acquire under the terms of the Program, CVPS will attempt to sell the excess RECs in the NEPOOL-GIS marketplace. Thus, CVPS's potential purchase and sale of RECs in the NEPOOL-GIS marketplace is a key component of the Program.

However, the MOU does not require the First Year Report to include any information regarding CVPS's purchases or sales of RECs in the NEPOOL-GIS marketplace. I believe this information will be helpful to the parties and the Board when they review the Program after it has been in operation for one year. I realize that REC trading quarters lag the quarters in which the associated energy is produced, and therefore, it will not be possible to report on a full year's worth of REC trading at the time the First Year Report is prepared. Nevertheless, I believe it will be beneficial for the First Year Report to include a summary of REC purchases and sales, by quarter, along with the average price paid or received for the RECs, for any quarter in which REC trades have occurred at the time the First Year Report is prepared. I recommend that the Board require CVPS to include this information in the First Year Report.

#### **V. CONCLUSION**

For the reasons discussed above, I recommend that the Board approve the MOU between CVPS and the DPS that was filed with the Board on May 28, 2004, with three minor amendments to which the parties have agreed, and one minor amendment which I have not previously raised with the parties. The agreed-upon minor amendments would require CVPS to include the following three additional items in the report the MOU requires it to file with the Board and the DPS after the Program has been in operation for one year:

- the balance held in the CVPS Cow Power Account (on a monthly basis) and an assessment as to whether carrying costs should accrue to the benefit of these balances;
- the amount and type of transmission and distribution avoidance benefits (if any) attributable to the interconnected operation of participating farm generation; and
- the effort that would need to be incurred and the desirability of opening up Rider service to budget billing customers.

The additional minor amendment (which I have not previously raised with the parties) would require CVPS to include in the First Year Report a summary of REC purchases and sales, by quarter, along with the average price paid or received for the RECs, for any quarter in which REC trades have occurred at the time the First Year Report is prepared. I further recommend that the Board approve the Program and the Rider, subject to the terms and conditions of the MOU.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 30 V.S.A. § 811.

Dated at Montpelier, Vermont, this 28<sup>th</sup> day of July, 2004.

s/Ann Bishop

Ann Bishop  
Hearing Officer

## VI. ORDER

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

1. The findings and conclusions of the Hearing Officer are adopted.
2. The Memorandum of Understanding ("MOU") between Central Vermont Public Service Corporation ("CVPS") and the Vermont Department of Public Service ("DPS") that was filed with the Board on May 28, 2004, is accepted, with the modifications described in Paragraph 3, below.
3. CVPS shall include the following four additional items in the report the MOU requires it to file with the Board and the DPS after the Voluntary Renewable Pricing Program has been in operation for one year:
  - the balance held in the CVPS Cow Power Account (on a monthly basis) and an assessment as to whether carrying costs should accrue to the benefit of these balances;
  - the amount and type of transmission and distribution avoidance benefits (if any) attributable to the interconnected operation of participating farm generation;
  - the effort that would need to be incurred and the desirability of opening up Rider Tariff service to budget billing customers; and
  - a summary of Renewable Energy Credit ("REC") purchases and sales, by quarter, along with the average price paid or received for the RECs, for any quarter in which REC trades have occurred at the time the First Year Report is prepared.
4. CVPS's Voluntary Renewable Pricing Program and the tariff Rider implementing the Program are approved, effective with service rendered September 1, 2004, and bills rendered October 1, 2004.
5. Within five business days of this Order, CVPS shall file an executed tariff Rider.
6. This Docket shall be closed.

Dated at Montpelier, Vermont, this 30<sup>th</sup> day of July, 2004.

s/Michael H. Dworkin )

) PUBLIC SERVICE

s/David C. Coen )

) BOARD

s/John D. Burke )

) OF VERMONT

OFFICE OF THE CLERK

FILED: July 30, 2004

ATTEST: s/John P. Bentley  
Acting Clerk

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

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