

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7770

Amended Joint Petition of Central Vermont Public Service)
Corporation ("CVPS"), Danaus Vermont Corp., Gaz Métro)
Limited Partnership ("Gaz Metro"), Gaz Métro inc., Northern)
New England Energy Corporation ("NNEEC") for itself and as)
agent for Gaz Métro's parents, Green Mountain Power)
Corporation ("GMP") and Vermont Low Income Trust for)
Electricity, Inc. ("VLITE"), for approval of: (1) the merger of)
Danaus into and with CVPS; (2) the acquisition by NNEEC of)
the common stock of CVPS; (3) the amendment to CVPS's)
Articles of Association; (4) the merger of CVPS into and with)
GMP; and (5) the acquisition by VLITE of a controlling)
interest in Vermont Electric Power Company, Inc.)

Order entered: 5/22/2012

**ORDER RE: STOWE ELECTRIC DEPARTMENT'S
EVIDENTIARY OBJECTION AND MOTION TO STRIKE**

On May 2, 2012, the Petitioners filed "for the Public Service Board's information a Letter Agreement and forms of a Shareholders Agreement and Waivers of Rights of First Refusal."¹ The cover letter accompanying the filing stated that "the documents have been agreed to by VELCO and most of the shareholders of VELCO, and resolve all issues between the parties relating to VELCO governance, except for Stowe Electric Department."² The Petitioners' filing included neither a motion to admit the Shareholders Agreement into evidence nor any other request for the Public Service Board ("Board") to approve this agreement.

On May 4, 2012, the Town of Stowe Electric Department ("SED") filed a motion objecting to the admission into evidence of the Shareholders Agreement and requesting that the Board strike all references to that document in the briefs and proposed findings of fact submitted by Vermont Electric Power Company, Inc. ("VELCO"), Vermont Public Power Supply Authority

1. Letter from Peter H. Zamore, Esq., on behalf of Petitioners, to Susan M. Hudson dated May 2, 2012. Hereinafter, the documents attached to this letter are referred to collectively as the "Shareholders Agreement."

2. *Id.*

("VPPSA"), City of Burlington Electric Department ("BED") and Vermont Electric Cooperative, Inc. ("VEC").³

On May 8, 2012, the Petitioners filed a response to the SED Motion stating that "no party has sought to introduce the [Shareholders] Agreement into evidence . . . Nor has any party sought Board approval of the Agreement."⁴

Having reviewed the SED Motion and the Petitioners' reply, we conclude that there is no motion pending for the admission into evidence of the Shareholders Agreement. Accordingly, we find the evidentiary objection in the SED Motion has been raised prematurely. Therefore, SED's objection is overruled.⁵

Similarly, SED's request to strike any references to the Shareholders Agreement in other parties' briefs and proposed findings is not well-founded. SED's first argument is that VEC's proposed findings 12 and 13 are premised upon the existence of the Shareholders Agreement — a document that has not been introduced into evidence. Therefore, SED insists that these proposed findings must be struck from the record because they run afoul of the requirement in Board Rule 2.222 that "each proposed finding shall contain a citation or citations to the specific part or parts of the record containing evidence upon which the proposed finding is based."⁶ However, after the SED Motion was filed, VEC sent a letter to the Board clarifying that these findings were proposed "in error."⁷ Accordingly, we conclude that SED's Rule 2.222 argument concerning VEC's proposed findings 12 and 13 is now moot.

3. *Opposition to Admission of Prefiled Testimony and Motion to Strike References to Shareholders Agreement*, dated May 4, 2012, at 10 (the "SED Motion"). The specific arguments and proposed findings that SED wishes to have stricken are: VELCO Direct Brief at 5-6; VPPSA Direct Brief at 8; BED Direct Brief at 4; VEC Brief at 4 and Proposed Findings 12 and 13. As the SED Motion was filed before SED had an opportunity to review the other parties' reply briefs, SED prospectively requested that the Board strike any references to the Shareholders Agreement in the reply briefs as well. SED Motion at 10.

4. Letter from Peter H. Zamore, Esq., on behalf of Petitioners, to Susan M. Hudson dated May 8, 2012.

5. Having reached this conclusion, there is no need for us to address SED's argument that the Shareholders Agreement effectively constitutes direct testimony, and that its admission into evidence without further process would be tantamount to depriving SED of (1) the opportunity pursuant to 3 V.S.A. § 810(3) to "conduct cross-examinations required for a full and true disclosure of the facts"; and (2) the opportunity pursuant to 3 V.S.A. § 809(c) to "respond to and present evidence and argument on all issues involved."

6. SED Motion at 7; Board Rule 2.222.

7. Letter from Victoria J. Brown to Susan M. Hudson dated May 8, 2012. VEC's proposed findings 12 and 13 contemplated the admission of the Shareholders Agreement into evidence as an exhibit demonstrating that the VELCO governance issues had been resolved.

Next, with respect to both VEC's proposed findings and a variety of statements about the Shareholders Agreement in the direct briefs of VEC, VELCO, BED and VPPSA, SED contends that "because references are made to a document not introduced into evidence, they are surplusage with respect to the Proposed Findings of Fact and/or Legal Briefs of the referencing parties."⁸ Therefore, pursuant to V.R.C.P. 12(f), SED urges us to strike the other parties' references to the Shareholders Agreement as "redundant, immaterial, impertinent, or scandalous matter."⁹ However, SED's argument overlooks that V.R.C.P. 12(f) is a procedural rule which on its face applies only to "pleadings," and not to legal briefs or other papers that are routinely filed in a legal proceeding.¹⁰ Thus, we find SED's reliance upon V.R.C.P. 12 (f) to be misplaced. Furthermore, to the extent that SED now finds it necessary to prevent our consideration of proposed findings of fact or legal arguments that purport to rely on facts not in evidence, we observe that SED had an opportunity to address this issue in its reply brief — the more typical and appropriate avenue for a party to call attention to remarks and arguments that are not supported by the evidence and therefore should be given no weight in the Board's deliberations.

Finally, we note SED's express request that the Board "disregard" the contents of the Shareholders Agreement "for the purposes of its deliberations on the issues raised in this Docket."¹¹ We take this opportunity to remind all parties to this proceeding of the Board's obligation under 30 V.S.A. § 809(g) to base its findings of fact "exclusively on the evidence and on matters officially noticed." Therefore, in the interests of procedural regularity and efficiency, we urge all parties to more carefully consider this statutory constraint before making any further filings in this case that are anticipatory in nature or unspecified in their purpose.

In sum, for the foregoing reasons discussed herein, the SED Motion is denied.

SO ORDERED.

8. SED Motion at 7.

9. *Id.*; V.R.C.P. 12(f).

10. Compare V.R.C.P. 7(a) (defining pleadings) and V.R.C.P. 7(b) (describing motions and other papers).

11. SED Motion at 7.

Dated at Montpelier, Vermont, this 22nd day of May, 2012.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: May 22, 2012

ATTEST: s/Susan M. Hudson

Clerk of the Board

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