

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Docket No. 7770

Joint Petition of Central Vermont Public Service)
Corporation ("CVPS"), Danaus Vermont Corp.,)
Northern New England Energy Corporation)
("NNEEC") for itself and as agent for Gaz Metro)
Limited Partnership and its 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 CVPS and certain other Vermont)
companies; (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.)

BRIEF OF CITY OF BURLINGTON ELECTRIC DEPARTMENT

NOW COMES City of Burlington Electric Department ("BED"), by and through its attorneys, McNeil, Leddy & Sheahan, P.C., and pursuant to Rule 2.223 of the Board's Rules of Practice, hereby submits this Brief in support of its position in connection with the proposed merger of Central Vermont Public Service ("CVPS") and Green Mountain Power Corporation ("GMP").

INTRODUCTION

The subject of this proceeding is a series of transactions that will result in one company owning a super-majority interest in Vermont's electric utility industry. BED does not oppose the proposed merger of CVPS and GMP provided the interests of its customer-owners are not compromised in the process. BED has identified two areas where existing arrangements must be addressed to protect the interests of BED and its ratepayers: (1) the Agreement for Joint Ownership, Construction and Operation of the

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Highgate Transmission Interconnection (“Highgate Agreement”); and (2) the ownership and control of Vermont Transco, LLC (“VTransco”) and its managing member, Vermont Electric Power Company, Inc. (“VELCO”). City of Burlington Electric Department’s Proposed Findings of Fact dated April 23, 2012 (“BED Findings”) ¶ 2.

I. Highgate Agreement

With respect to the Highgate Agreement, all parties to weigh in on the subject agree with BED’s proposal to amend the manner in which operational decisions concerning the facility are made. *Id.* ¶ 7. Currently, such decisions are made by a management committee made up of representatives of the facility’s owners, with each representative having a percentage of votes equivalent to its ownership share in the project. *Id.* ¶ 3. The affirmative vote of two representatives holding at least fifty percent (50%) of the total votes is required for committee action. *Id.* ¶ 4. To ensure the interests on non-transmission owning utilities are considered and protected, the Highgate Agreement’s voting requirement should be amended to require the affirmative vote of at least three (3) members holding at least fifty percent (50%) of the total votes. *Id.* ¶ 6. BED respectfully requests the Board to condition any approval of the proposed merger on requiring the combined company to amend the Highgate Agreement in this fashion.

II. VELCO Governance

The majority of Vermont’s high-voltage transmission system assets are owned by VTransco, a limited liability company whose membership is comprised of Vermont’s distribution utilities and VELCO, with the latter serving as the company’s managing member. Hence, control of VELCO is tantamount to control of Vermont’s high-voltage transmission system. To protect against the “tyranny of the majority” concerns raised in

this proceeding, steps must be taken to ensure the combined company does not utilize its super-majority interest in both VTransco and VELCO to the detriment of the interests of those company's minority owners and their ratepayers.

The Petitioners originally proposed to address these concerns through the transfer of 38% of CVPS's voting shares in VELCO to a new entity, the Vermont Low Income Trust for Electricity, Inc. ("VLITE"), with BED, Vermont Public Power Supply Authority ("VPPSA") and Vermont Electric Cooperative ("VEC") serving as VLITE's trustees. More recently, the Petitioners and the Department of Public Service ("Department" of "DPS") entered into a Memorandum of Understanding which, *inter alia*, addresses VELCO governance issues. *See* Memorandum of Understanding between Petitioners and the Vermont Department of Public Service dated March 26, 2012 ("MOU") ¶¶ 7-14. Under the MOU, the DPS will appoint the original VLITE board of directors. *Id.* ¶ 8. Thereafter the VLITE board is intended to be self-perpetuating without further input from the DPS. *See* tr. 4/4/2012 (Miller). VLITE in turn will nominate three directors to the VELCO board of directors. MOU ¶ 11. The appointment of VLITE nominees to the VELCO board is assured through a voting agreement between VLITE and GMP, with each agreeing to vote their respective shares in support of the other's nominees. *Id.* Attachment I. The MOU also calls for maintaining the number of VELCO directors at 13; with four seats filled by GMP, three by VLITE, one each for BED, VPPSA, VEC and the VELCO CEO, and two "independent" directors appointed by the representatives of public power. *Id.* ¶ 11.

One major concern expressed by parties in this proceeding is the ability of the combined company to unilaterally remove VELCO as the managing member of

VTransco, or make other changes to the VTransco Operating Agreement that would work to the detriment of its minority owners.. The MOU addresses this issue by requiring Petitioners to take all actions necessary to assure that none of them can unilaterally remove VELCO as the managing member or to eliminate Section 9.3 of the VTransco Operating Agreement. MOU ¶ 13. Such amendments are to be in a form acceptable to the DPS, which BED understands will limit its review of the Operating Agreement to tyranny of the majority issues. Tr. 4/4/2012 (Miller).

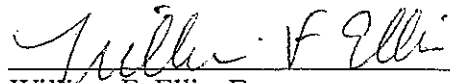
Another major concern raised by BED in this proceeding is the potential “politicizing” of the VELCO board, which could have far reaching and unintended consequences. BED Findings ¶ 12. The MOU does not address this concern in that the VLITE board of directors will be effectively appointed by a department of the executive branch of state government, with no restriction on the ability of these political appointees to appoint themselves to the VELCO board. To address this concern, since the close of the technical hearings in this matter VELCO’s owners and the DPS have negotiated a shareholders agreement which establishes independence criteria for the VLITE nominees as well as the two public power nominees, and prohibits VLITE directors from appointing themselves to the VELCO board. Assuming this shareholder agreement is finalized and in place, the VELCO board will increase the number of independent directors from three to five, which is more in line with corporate best practices than reducing the number of independent directors. With this shareholder agreement in place, which BED believes will occur by the date for filing reply briefs in this matter, BED is supportive of the MOU.

CONCLUSION

Should the Board determine that the proposed merger of CVPS and GMP is in the public interest, the Board should condition that approval on GMP agreeing to amend Section 1.1 of the Highgate Agreement to require the vote of at least three owners representing at least 50% of the ownership interest in the facility. Furthermore, the Board should condition any approval on GMP and VLITE entering into a shareholders agreement that prohibits VLITE from nominating its own directors to serve on the VELCO board, and for its nominees to meet the "independence" criteria established by VELCO's owners.

Dated at Burlington, Vermont, this 23rd day of April 2012.

Respectfully submitted,



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**CITY OF BURLINGTON ELECTRIC DEPARTMENT'S
PROPOSED FINDINGS OF FACT**

NOW COMES City of Burlington Electric Department ("BED"), by and through its attorneys, McNeil, Leddy & Sheahan, P.C., and pursuant to Rule 2.222 of the Board's Rules of Practice, hereby submits proposed findings of fact for consideration by the Board in the above-captioned proceeding.

FINDINGS OF FACT

1. BED is a party to a wide array of joint arrangements with Central Vermont Public Service ("CVPS"), Green Mountain Power Corporation ("GMP") and other Vermont utilities, and is concerned with the proposed combined company's ability to control decision making in connection with those arrangements. Prefiled Testimony of Kenneth A. Nolan dated January 20, 2012 ("Nolan pf.") at 2.

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2. BED reviewed all of its known agreements and arrangements with CVPS and GMP and identified two instances where the existing mechanisms are inadequate to protect the interests of BED's ratepayers: (1) the Agreement for Joint Ownership, Construction and Operation of the Highgate Transmission Interconnection ("Highgate Agreement"); and (2) the ownership and control of Vermont Transco, LLC ("VTransco") and Vermont Electric Power Company, Inc. ("VELCO"). *Id.*

3. Decisions concerning the Highgate Interconnection are made by a management committee consisting of one representative appointed by each owner of the facility, with each owner having a percentage of votes equivalent to its ownership share in the project. Board Exhibit 9, Section 1.1.

4. Under Section 1.1 of the Highgate Agreement, decisions of the management committee are "made by the affirmative vote of at least two (2) Owners representing a majority of the Ownership Shares of the Project." *Id.*

5. Following completion of the proposed merger, there will be two remaining low voltage transmission providers in Vermont, GMP and Vermont Electric Cooperative ("VEC"). Nolan pf. at 4.

6. To ensure the interests on non-transmission owning utilities are considered when decisions are made concerning the Highgate Interconnection, Section 1.1 of the Highgate Agreement should be amended to require the affirmative vote of at least three (3) Owners representing a majority of the Ownership Shares of the Project. *Id.* at 5.

7. GMP, Vermont Public Power Supply Authority and Washington Electric Cooperative have agreed with BED to amend the Highgate Agreement in this fashion. Prefiled Rebuttal Testimony of Brian Otley dated February 15, 2012 at 2; Prefiled

Testimony of David Mullett dated January 20, 2012 at 6; Prefiled Rebuttal Testimony of Avram Patt dated March 8, 2012 at 5.

8. BED is not opposed to the proposed merger provided any Board approval is conditioned to ensure that BED's competitive position relative to the combined company is not undermined. Prefiled Surrebuttal Testimony of Kenneth A. Nolan dated March 8, 2012 ("Nolan spf.") at 2.

9. Changes are required in the governance of VELCO and VTransco to ensure that the combined company does not control all decisions affecting these entities. Nolan pf. at 10.

10. The Petitioners' proposal to place a portion of CVPS's VELCO shares in the newly created Vermont Low Income Trust for Electricity, Inc. ("VLITE"), and make revisions to the VTransco Operating Agreement to ensure that the combined company cannot remove VELCO as the manager of VTransco, partially address the "tyranny of the majority" concerns raised in this proceeding. *Id.* at 11; Nolan spf. at 17-18.

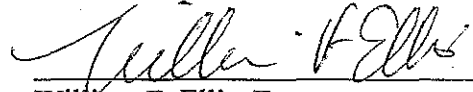
11. VELCO is already highly regulated at the federal, regional and state levels such that drastic governance changes are not required to ensure it meets the public interest and acts in support of the public good. Nolan pf. at 12-13.

12. Any attempt to politicize the VELCO board could have far reaching and unintended consequences. *Id.* at 14; *see generally* Prefiled Testimonies of Christopher L. Dutton and Nora M. Brownell on behalf of VELCO.

Dated at Burlington, Vermont, this 23rd day of April 2012.

CITY OF BURLINGTON
ELECTRIC DEPARTMENT

By:



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