

**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.)

REPLY 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 its reply to positions advanced by Washington Electric Cooperative ("WEC") and Stowe Electric Department ("SED") in their initial briefs. BED also takes this opportunity to comment on the informational filing made by Petitioners on May 2, 2012, regarding agreements reached concerning governance of Vermont Electric Power Company, Inc. ("VELCO").

I. WEC Brief

In its filing, WEC supports adoption of the Memorandum of Understanding between Petitioners and the Department of Public Service filed in this matter as Exhibit Petitioners-DPS-1 ("MOU") "as it adequately addresses the concerns of VELCO's governance raised by the merger." WEC's *Corrected Proposed Findings and Memo of*

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Law dated April 24, 2012, at 2, 7. WEC also correctly notes “that the MOU does not fully address” all issues concerning implementation of the MOU, including how the “independent public power directors” will be elected. *Id.* at 8. As set forth in Section III below, from BED’s perspective the documents filed by Petitioners on May 2, 2012 for informational purposes adequately address any open issues concerning VELCO governance. WEC, however, seeks to have “the Board *direct* that [independent public power] directors will be nominated with BED, VEC, VPPSA, WEC and SED each having one vote.” *Id.* (emphasis added).

BED certainly supports the notion that the manner in which the independent public power directors are nominated should be “fundamentally fair.” *Id.* One could easily argue that giving WEC, with its 1.21% ownership share in VELCO, an equal vote to VPPSA, which has members with ownership shares larger than WEC’s, is not fundamentally fair. *See* Prefiled Testimony of Kenneth A. Nolan dated January 20, 2012, at 15-16. Regardless, the Board need not and should not issue an order *directing* public power on how to nominate the independent public power directors to the VELCO board. The nomination of directors of a private corporation by its shareholders is governed by Title 11A of Vermont Statutes Annotated, not Title 30, and is beyond the scope of the Board’s jurisdiction. *See, e.g., Trybulski v. Bellows Falls Hydro-Electric Corp.*, 112 Vt. 1, 7 (1941) (noting that public service commission is a “body exercising special and statutory powers . . . as to which nothing will be presumed in favor of its jurisdiction.”). Moreover, public power should be able to reach an equitable solution without the Board interjecting itself into the management affairs of a private company.

II. SED Brief

Throughout this proceeding SED has sought to justify why it should have a seat on the VELCO board of directors. One justification it offers is its present ownership interest in Vermont Transco, LLC (“VTransco”), a company separate and distinct from VELCO. *Legal Brief of Town of Stowe Electric Department* dated April 23, 2012 at 7. SED’s present ownership interest in VTransco is temporary as a result of being allowed to purchase additional membership units to help fund the Specific Facility charges resulting from the Lamoille County Project (“LCP”). SED will be required to offer those membership units back to VTransco’s other members after 10 years, at which time SED’s ownership interest will return to historical levels.

SED also argues, without any factual support, that the two-company structure of VELCO and VTransco is unnecessary. *Id.* at 8. SED in essence is arguing that the Board should revisit its Order in Docket No. 7174, which created VTransco. Not only is this request procedurally inappropriate in the context of the present docket, it fails to recognize the benefits the ratepayers of all VTransco owners, including SED’s, have reaped from the creation of that company. SED itself has benefitted greatly through the settlement of the LCP dispute, which allowed it to purchase additional membership units and obtain a 13.3% return on investment to offset the Specific Facility charges it incurred in connection with the LCP.

Finally, SED either misunderstands the corporate structures of VTransco and VELCO or is attempting to cause confusion by arguing that VLITE will obtain a controlling interest in VTransco through its ownership interest in VELCO. As stated above, VELCO and VTransco are two different companies, and the attempt to conflate

the two is inappropriate. As was questioned a few times during the hearings in this matter, if it isn't broke, why fix it? The manner in which Vermont's high-voltage transmission system is owned, managed and operated is not broken, and SED's attempts to fix a problem that does not exist should be rejected by the Board. Furthermore, BED respectfully submits that it would be beyond the Board's jurisdiction to order who the shareholders of a private company should nominate as directors.

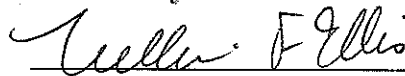
III. VELCO Governance

A major concern raised by BED in this proceeding is that VELCO governance should not be politicized as suggested by some witnesses. The MOU entered into by the DPS and Petitioners did not assuage that concern, given that a department of the executive branch would appoint the initial board of directors of VLITE. Since the close of the hearings in this matter, however, VELCO's shareholders and the DPS have fashioned a solution to the VELCO governance issues raised in this proceeding. By filing dated May 2, 2012, Petitioners have submitted a Letter Agreement and two attachments for informational purposes. Through these agreements, the vast majority of VELCO's shareholders, including VLITE, will execute a Shareholders Agreement establishing a 13-person board, with four directors nominated by the combined company, three by VLITE, one each by BED, VPPSA and VEC, two by public power and VELCO's CEO. In addition, while not outright banning political appointees from the VELCO board, the Shareholders Agreement establishes "independence" criteria for the VLITE and public power nominees, and prohibits VLITE directors, officers and employees from being appointed. While not perfect, BED is satisfied that the VELCO board will be sufficiently protected from political influence through these documents.

BED does not believe Board approval of the informational filing made by the Petitioners on May 2, 2012 is necessary. Rather, these documents were filed to allow the Board to conclude that the concerns over VELCO governance as raised in this proceeding have been adequately addressed by the vast majority of its shareholders.

Dated at Burlington, Vermont, this 4th day of May 2012.

Respectfully submitted,



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c: Service List

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