

**STATE OF VERMONT  
PUBLIC SERVICE BOARD**

**Docket No. 7770**

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

**PROPOSED FINDINGS AND MEMO OF LAW**

NOW COMES Washington Electric Cooperative, Inc. ("WEC"), by and through its attorneys, Diamond & Robinson, P.C., and hereby submits the following Proposed Findings and Memorandum of Law in the above captioned matter.

**I. INTRODUCTION.**

Petitioner's proposed merger will have significant impacts upon the governance and operation of VELCO/Vtransco, Vermont's transmission utility. This includes control by one dominant shareholder at the expense of minority shareholders and the public good of the State of Vermont ("State"). It will also significantly impact WEC's

sub-transmission service that it currently receives from Green Mountain Power, Inc. ("GMP").

Petitioners and the Vermont Department of Public Service ("DPS") entered into a Memorandum of Understanding ("MOU") as reflected in Exhibit Petitioners-DPS-1. WEC believes there may be other favorable alternatives to address concerns about VELCO's governance, such as public ownership. Although WEC does not take a position on other aspects of the proposed merger being considered in this proceeding, WEC supports adoption of this MOU as it addresses many issues raised about VELCO governance and operations arising from the proposed merger if it is approved. WEC is also requesting that the Board help minimize the adverse impact upon WEC's sub-transmission service caused by the merger.

## **II. VELCO GOVERNANCE.**

### **A. Proposed Findings.**

1. Vermont's high voltage transmission system is owned by VTransco, LLC ("Vtrnasco"). It is managed by the Vermont Electric Power Company, Inc. ("VELCO" and collectively the two entities are referred as "VELCO"). Dutton pf. at 4-7.

2. VELCO is obligated to serve the public interest beyond returning a rate of return to shareholders. 1/21/12 Tr. at p. 26-27 (Powell). VELCO has an obligation to promote the general good of the state and accommodate the public interest. Tr. Brownell Tr. at 98, l. 12-21 (3/27/12). Dutton Tr. at 13, l. 13-17 (3/28/12).

3. VELCO has a duty to serve the public's need for electric transmission service. 3/28/12 Tr. at p. 13 (Dutton).

4. VELCO has the ability to wield great economic and operational influence over the generators, distribution utilities and general public, who need its services. Dworkin pf. at p. 7-8.

5. VELCO's operations and managerial decisions have major impacts upon:

- a. The environment, land use and aesthetics;
- b. Vermont distribution utilities' ability to interface with ISO-NE;
- c. Interconnection decisions;
- d. Planning decisions and data that impact upon Vermont's ability to predict, prepare and influence the future of energy including generation and transmission infrastructure;
- e. Operation control for power plants and transmission infrastructure that directly impact system reliability.

Dworkin pf. at p. 15.

6. The selection of VELCO's thirteen (13) directors occurs through custom and tradition. The selection of directors is not provided for in VELCO's bylaws. Tr. 3/21/12 at p.19 (Powell).

7. VELCO board is currently dominated by representatives from its largest shareholders. There are concerns that this governing framework has problems because a majority of the directors have inherent conflicts by wearing multiple hats as directors or officers of the companies who own VELCO and receive its services. 1/21/12 Tr. P. 31 (Powell); 3/27/12 Tr. at p. 99 (Brownell); 3/28/12 Tr. at p. 20 (Dutton).

8. WEC does not have a designated representative director on the VELCO board, unlike the other larger Vermont utilities. This has left WEC "out of the loop" on

major transmission and reliability initiatives. Patt pf. at 8-9. It has been suggested that participation in VELCO's operating committee would resolve this concern. Dutton pf. at 17. However, WEC is excluded from membership and regular participation on this committee by VELCO because its load share is less than 4%. 3/28/12 Tr. at p. 23 (Dutton); WEC Cross Exh. 23.

9. VELCO's governance, and in particular, its board of directors would benefit from having a more wide range set of perspectives and opinions than just representatives from the distribution utilities. Dworkin pf. at 22; 3/29/12 Tr. p. 22-23 (Dworkin); 3/28/12 Tr. at p. 57, l. 4-11 (Dutton). Experience shows that having people with diverse experiences and backgrounds can benefit organizations such as VELCO that serves the public good. See, Tr. 3/29/12 at 148 (Patt), Tr. 5/21/12, p. 56, l. 10-13 (Powell).

10. Public power utilities, including those in Vermont, often obtain diverse governing boards elected from the general public of their territories. Having such diversity does not adversely impact their governing board's abilities to discharge their fiduciary obligations. Such diversity allows these utilities' boards to discharge their fiduciary in a manner consistent with good public policy. Patt r-pf. at p. 2-4; Tr. 3/26/12 at p. 120—121 (Hallquist); 3/27/12 Tr. at p. 151 (Mullett); Tr. 3/28/12 at p. 86 (Burt).

11. VELCO would also benefit from having more independent directors. 3/28/12 Tr. at p. 22, 81 (Dutton).

12. Petitioner's merged company ("Combined Company"), will have 72.3% of VTransco membership units and 78% of VELCO shares without any changes to the current structures of Vtransco and VELCO. Essentially, the Combined Company would be able to exert effective control of VELCO, and this would be a radical change from the existing balance of power over Vermont's electricity grid. Dworkin pf. at p. 9.

13. The merger's potential impact upon VELCO raises the following additional concerns:

- (1) The central role that VELCO provides in transmitting bulk or whole sale electricity to Vermont's distribution utilities;
- (2) The ability for the owners and managers of VELCO to wield great economic and operational influence over those that need their services;
- (3) The concentrated control by GMP over VELCO that will result from the merger and the potential negative consequences;
- (4) How the public interest and the general good of the State are deeply affected by the decisions of VELCO's management; and
- (5) How the structure of VELCO's board prioritizes the general good of the State over the fiduciary obligations of the individual investors.

Patt pf. at p. 6-7.

14. The Vermont Department of Public Service ("DPS") and Petitioners have entered into an MOU that addresses VELCO's governance following the merger. This includes, but is not limited to, the following:

- a. Capping the number of the Combined Company's directors to four (4) out of thirteen (13).

- b. The transfer of 38% of VELCO voting stock, from Central Vermont Public Service Corp., to a public benefit corporation, VLITE, Inc. VLITE will be governed by directors from diverse backgrounds including government, energy policy interests groups, consumer and low income advocates, and public power utilities without current representation on the VELCO board of directors, i.e. WEC and/or Stowe Electric Department.
- c. VLITE will be able to nominate three (3) directors to the VELCO board. VLITE will have the ability to independently choose those directors its sees fit within the confines of a definition to insure financial and business independence from VELCO.
- d. Two independent directors will be selected from the existing public power utilities. However, there is no current mechanism that governs how these independent directors will be selected amongst the public power utilities.
- e. VEC, BED, and VPPSA will each have a designee serving on the VELCO board of directors.
- f. All distribution utilities with an ownership interest in VELCO will be permitted to participate fully as members in the VELCO Operating Committee.
- g. The Combined Company will be precluded from exercising majority equity position in VTransco from removing VELCO as the managing member.
- h. Support bylaws and other governing documents to formalize the above mentioned items, and clarify that VELCO will be managed as a public utility consistent with the public good of the state.

Exh. Petitioners-DPS -1, at p. 3-6; Exh. WEC Cross 44; 4/4/12 Tr. at 119, 121-122, 125 (Miller).

15. In addition, the MOU provides that Petitioners agree to refrain from obtaining a majority position in VELCO governance in the future. Exh. Petitioners-DPS-1, at p. 6.

16. The MOU provides a broader representation in VELCO governance that serves as an important counterbalance to what otherwise would occur if the Combined Company acquired the ability to control and influence VELCO. Tr. 4/4/12 at p. 134, l. 15-25 (Miller).

17. The Combined Company has also agreed to amend the Highgate Joint Ownership Agreement in a manner to prevent ability to exercise majority control over the minority owners. Otley r-pf. at 2.

**B. Discussion.**

If the merger is approved, the Board should approve the MOU reflected in Exh. Petitioners-DPS-1. as it adequately addresses the concerns of VELCO's governance raised by the merger.

As set forth above VELCO wields great economic and operational influence across Vermont. It significantly impacts the economy, the environment, and the ability of electric energy industry to provide safe, reliable, and affordable power to Vermont consumers. The Combined Company, without adequate conditions, will be able to exercise majority control over this important resource for its own benefit and at the potential expense of other utilities and the general public.

WEC believes there may be other beneficial ways to address these concerns. In particular, public ownership may be the best assurance that the people making important decisions about electric transmission in the future are doing so in both the public's and the ratepayer's best interests.

Nevertheless, the MOU will accomplish the goal of preventing the Combined Company from exercising majority control. It will also provide additional benefits such as helping to protect minority shareholders, and create a governing board with more diverse input and independence.

Regarding selection of the independent public power directors, it is noted that the MOU does not fully address how public power will elect these directors. WEC proposes that the Board direct that directors will be nominated with BED, VEC, VPPSA, WEC, and SED each having one equal vote. While WEC recognizes that it does not have the same load share and ownership interest as BED and VEC, having an equal vote is fundamentally fair here where these other utilities, including those served by VPPSA, already have a board seat at VELCO.

### **III. IMPACT UPON WEC's SUBTRANSMISSION SERVICE.**

#### **A. Proposed Findings.**

18. WEC is a ratepayer of GMP. Seven out of eight WEC substations are served by GMP's subtransmission lines. Patt pf. at 19.

19. The proposed merger is projected to increase WEC's subtransmission rates by almost 70% or \$128,000.00 per year because of the planned merger between GMP's and CVPS' subtransmission tariffs. Patt pf. at 20; Exh. WEC (AP) 12.

20. The Combined Company plans to hold commercial and industrial consumers harmless from the merged tariffs for an extended period of time. See Exh.

Pet-Cross 1 (MOU with IBM). The reason for this accommodation is to provide rate relief to the impacted customers. 3/22/12 Tr. at p. 133 (Griffin).

21. GMP will not guarantee that it will provide WEC the same assurances. 3/21/12 Tr. at p. 178-179 (Reilly).

**B. Discussion.**

WEC's subtransmission rates will be significantly and adversely impacted by the merger. In considering a merger, the Board may properly address the impact on customers or ratepayers. *See In Re: Joint Petition of Vermont Marble Power Division*, 2011 WL 2433071, Docket No. 7660 at § VA(6) (Order June 10, 2011). Accordingly, his Board should order GMP and/or the Combined Company to provide the same type of rate mitigation accorded to other non residential customers, such as IBM.

70% rate impact is clearly significant enough to justify such accommodations. GMP and/or the combined company should delay the implementation of the merger tariff for a reasonable period of time as permitted under FERC rules and precedent.

WEC realizes that FERC has primary jurisdiction over subtransmission tariffs. Nevertheless, the Board still retains jurisdiction over mergers of companies within its jurisdiction as well. *See In re: NSTAR Northeast Utilities*, 136 FERC P 61016, ¶ 65-66, 2011 WL 2661388 (2011); *New York State Elec. & Gas Corp v. New York Indep. Sysm. Operator*, 2001 WL 34084006 (NDNY 2001)(rejecting complete preemption doctrine). There is no just and reasonable basis to discriminate against WEC in not providing similar relief as other non residential ratepayers, to the extent available through FERC.

**CONCLUSION.**

For the reasons set forth above, WEC requests that the Board provide the following:

1. Condition the merger upon compliance with conditions set forth in MOU.
2. Condition the merger upon the Combined Company's modification of the Joint Owner's Agreement to prevent the exercise of majority control.
3. Condition the merger upon the Combined Company to provide rate mitigation to WEC to the extent available under FERC policies and precedent.

Dated at Montpelier, Vermont this 23<sup>rd</sup> day of April, 2012.

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