STATE OF VERMONT
PUBLIC SERVICE BOARD

Amended Joint Petition of Central Vermont Public Service Corporation ("CVPS"), Danaus Vermont Corp., Gaz Métro Limited Partnership ("Gaz Metro"), Gaz Metro inc., Northern New England Energy Corporation ("NNEEC") for itself and as agent for Gaz Metro'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 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.	)	Docket No. 7770

INTERNATIONAL BUSINESS MACHINES CORPORATIONS' PROPOSED FINDINGS OF FACT

I. APPROVAL OF THE MERGER SUBJECT TO CONDITIONS

IBM-1. The shared savings plan and merger savings calculation described in the Memorandum of Understanding between Green Mountain Power and the Vermont Department of Public Service ("GMP/DPS MOU"), as supplemented and amended by the Memorandum of Understanding between GMP, the Department and IBM ("IBM MOU"), should be approved by the Vermont Public Service Board ("Board") because it creates efficiencies that benefit customers by guaranteeing $15.5 million in customer savings in the first three years after the Merger and guaranteeing at least $144 million in customer savings in the ten years following the Merger. Exh. Petitioners-DPS-1 at ¶ 15; Exh. Pet-Cross-15 at ¶ 4.

IBM-2. The tariff and rate integration plan described in the GMP/DPS MOU, as supplemented by the IBM MOU, should be approved by the Board because it provides rate stability to customers, allows GMP to design rates using data from recently-deployed smart meters, and commits GMP to account for the differences in costs associated with serving load at the distribution and transmission level, as well as the differences in costs associated with the particular voltage levels at which transmission service is provided. 9/2/11 Griffin pf. at 5-9; 1/20/12 Rosenberg pf. at 5; Exh. Pet-Cross-15 at ¶ 6.

IBM-3. The financial integrity measures contained in the GMP/DPS MOU, as supplemented by the IBM MOU, should be approved by the Board because they ensure that GMP will remain sufficiently capitalized after the acquisition and provide important safeguards to protect customers from inappropriate affiliate transactions. 1/20/12 Gorman pf. at 19; 1/20/12 Wilson pf. at 43-50; Exh. Pet-DDB-4.

IBM-4. The commitment to revive the Virtual Choice program in the IBM MOU promotes competition in the energy markets because it allows large customers to participate in the procurement of power supply to meet individual customer loads without exposing other customers or GMP to credit or other risks. 4/13/12 Griffin pf. at 4-5.

IBM-5. GMP's commitment, in the GMP/DPS MOU, to improve the reliability standard for customer outage duration by at least 10 percent will enhance GMP's relationship with, and responsiveness to, its customers. 9/2/11 Otley pf. at 14.

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STATE OF VERMONT
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INITIAL BRIEF OF INTERNATIONAL BUSINESS MACHINES CORPORATION

April 23, 2012

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PRELIMINARY STATEMENT

International Business Machines Corporation ("IBM") hereby submits its Initial Brief in Docket No. 7770. For the reasons set forth herein, the Vermont Public Service Board ("Board") should approve the Merger in accordance with the Joint Petition filed by the Petitioners[1] on September 2, 2011, subject to the terms and conditions of the Memorandum of Understanding dated April 3, 2012 between Petitioners, the Vermont Department of Public Service ("Department" or "DPS"), and IBM.

PROCEDURAL HISTORY

On September 2, 2011, the Petitioners filed a Joint Petition, with supporting Direct Testimony and Exhibits, seeking a Board Order under 30 V.S.A. §§ 104, 107, 109 and 311 approving a series of transactions under which NNEEC will acquire CVPS, and then ultimately merge CVPS into and with GMP, with GMP as the surviving company ("Merger").[2]

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[1] The Petitioners are Central Vermont Public Service Corporation ("CVPS"), Danaus Vermont Corp., Gaz Metro Limited Partnership ("Gaz Metro"), Gaz Metro inc. ("GMi"), Northern New England Energy Corporation for itself and as agent for Gaz Metro's parents ("NNEEC"), Green Mountain Power Corporation ("GMP") and Vermont Low Income Trust for Electricity, Inc. ("VLITE"). On September 28, 2011, the Petitioners filed an Amended Joint Petition to add Gaz Metro and GMi to the list of Petitioners.

[2] As described by Petitioners, the full series of transactions include: (1) the acquisition by NNEEC of a controlling interest in CVPS and the merger of Danaus into and with CVPS, with CVPS as the surviving company; (2) the amendment to CVPS's Articles of Association; (3) the indirect acquisition by NNEEC of a controlling interest in Vermont Yankee Nuclear Power Corporation ("VYNPC"), Vermont Electric Power Company, Inc. ("VELCO"), Vermont Transco, LLC ("Transco") and Vermont Electric Transmission Company, Inc. ("VETCO," and together with VELCO and Transco, the "VELCO Companies"); (4) the transfer to VLITE of an ownership interest of approximately 33% of the VELCO Class B voting common stock and approximately 31.7% of the VELCO Class C nonvoting common stock by CVPS to VLITE; and

In Direct Testimony, Petitioners sought approval of several Merger-related proposals, including a plan to share the savings that are estimated to be created by the Merger between customers and Petitioners, a plan for integrating the tariffs and rates of CVPS and GMP, a plan to satisfy the windfall sharing obligation set forth in the Board's June 26, 2001 Order in Docket Nos. 6120/6460, and a plan to divest itself of control over the VELCO Companies.

On January 10, 2012, the Department filed testimony responding specifically to the Petitioners' proposal for the VELCO Companies. On January 20, 2012, IBM, the Department, and 12 other parties filed Direct Testimony responding to Petitioners' testimony, with several parties also responding to the Department's testimony regarding the VELCO Companies.

IBM's Direct Testimony addressed the Petitioners' proposed shared savings plan; the potential impact of the Merger on regulated utility operations and access to capital; and the timing and manner of integrating CVPS's and GMP's rates and tariffs. Among other things, IBM argued that: (1) Petitioners' proposed shared savings plan should be rejected and all Merger-related savings should be passed on to customers; (2) GMP should not be able to write loans to non-regulated affiliate companies; (3) GMP's Board of Directors and/or NNEEC's Board of Directors should contain at least two "independent" Board members; (4) GMP's Transmission Service Rate should be retained as a separate and distinct class in any integrated class cost of service study conducted by the Petitioners; (5) before any cost of service study and set of tariffs are approved, all parties who wish to intervene should be afforded the full rights of

(5) the merger of CVPS into and with GMP, with GMP as the surviving company. Joint Petition at 1.

discovery and presenting evidence; (6) no customer tariffs should increase prior to a fully litigated rate proceeding; and (7) a cost of service study and rate proceeding should be completed approximately one and a half years subsequent to the final decision in this proceeding.

On February 15, 2012, Petitioners filed Rebuttal Testimony. Petitioners addressed IBM's shared savings proposal, IBM's position regarding independent directors and IBM's recommendations regarding the timing of the cost of service study and rate design proceeding. Petitioners agreed to adopt IBM's proposal preventing loans to non-regulated affiliates. On March 8, 2012, IBM filed Surrebuttal Testimony further responding to Petitioners' claims regarding the fairness and mechanics of Petitioners' proposed shared saving plan.

Technical hearings were held in this proceeding on March 21-22 and 26-29, 2012 and April 3-4, 2012. During the technical hearings, on March 26, 2012, GMP and the Department executed a Memorandum of Understanding ("GMP/DPS MOU") that resolved several Merger-related issues between GMP and the Department.[3] As noted during the technical hearings, the positions in the GMP/DPS MOU supersede the Department's previous positions in its Direct and Surrebuttal Testimony, and are now the Department's official positions on the items contained therein.[4] On April 3, 2012, IBM executed a separate Memorandum of Understanding with GMP and the Department ("IBM MOU"). As discussed further below, the

[3] The GMP/DPS MOU addresses the following Merger-related issues: (1) VELCO ownership and governance; (2) guaranteed shared savings; (3) the windfall sharing mechanism; (4) reliability improvement; (5) financial integrity measures; (6) the Alternative Regulatory Plan and merger savings calculation; (7) tariff and rate integration; and (8) other miscellaneous terms and conditions.

[4] 3/29/12 Hearing Transcript at 61:23-62:1.

IBM MOU contains IBM's support for certain provisions of the GMP/DPS MOU, subject to the various clarifications and supplements contained therein.[5]

DISCUSSION

THE BOARD SHOULD APPROVE THE MERGER SUBJECT TO THE TERMS OF THE IBM MOU

Vermont law requires that, prior to completing the Merger, GMP obtain approval from the Board under 30 V.S.A. §§ 104, 107, 109 and 311. Under these sections, the Board must find that the transactions promote the general good of the state and that they will not impair competition.

In reviewing acquisitions, the Board has typically evaluated five concerns: whether the surviving company (1) is technically competent, (2) is financially sound, (3) will act as a fair partner in business transactions with the citizens of Vermont, (4) creates efficiencies that will benefit customers, and (5) will not cause impairment of or obstruct competition in the energy markets as a result of the transaction.[6]

The Merger, as modified by the terms of the IBM MOU, satisfies the above concerns and therefore promotes the general good of the State of Vermont because: (i) ratepayers are guaranteed $144 million in merger related savings over the course of the first ten years post-

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[5] IBM takes no position with respect to the following items in the GMP/DPS MOU: VELCO ownership and governance; the windfall sharing mechanism; and the other miscellaneous terms and conditions. These items are not included in the IBM MOU and therefore will not be discussed further in this Brief.

[6] Docket No. 7213, *Joint Petition of Green Mountain Power Corp., et al.*, Order (March 26, 2007) at 9-10; Docket No. 6150, *Joint Petition of Bell Atlantic Corp., et al.,* Order (September 13, 1999) at 48-49.

closing, including $15.5 million in fixed savings in the first three post-Merger years; (ii) the rates and tariffs of non-residential CVPS and GMP customers will be integrated through a fair and timely regulatory process; (iii) GMP has agreed to several financial integrity measures that will protect GMP's cash flows and credit rating and prevent abusive affiliate transactions; (iv) GMP has committed to reviving its Virtual Choice program in order to allow large customers to participate in energy markets; and (v) GMP has committed to improve the reliability standard for customer outage duration in its Service Quality and Reliability Plan by at least 10 percent.[7]

A. The IBM MOU Promotes the General Good by Providing Significant Near-term Customer Savings and Guaranteeing at Least $144 Million in Merger-Related Customer Savings in the First Ten Years

The IBM MOU supports the shared savings plan in the GMP/DPS MOU, with one clarification, because it ensures that the Merger will create efficiencies that benefit customers. Pursuant to the GMP/DPS MOU, GMP guarantees at least $144 million in customer savings over the course of the first ten post-Merger years. In the first three years, GMP will provide fixed annual guaranteed savings of $2.5 million, $5.0 million, and $8.0 million, respectively. In years 4-8, Merger-related savings will be split 50/50 between customers and investors. After year 8, 100 percent of savings will flow to customers.[8] The IBM MOU clarifies that, at the end of year 10, if total savings do not equal $144 million, then GMP will provide a plan for Board review to return the difference to customers through a bill credit.[9]

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[7] No party to this proceeding has challenged GMP's technical competence to operate the combined CVPS-GMP system.

[8] Exh. Petitioners-DPS-1 at ¶ 15.

[9] Exh. Pet-Cross-15 at ¶ 4.

Under the GMP/DPS MOU, Petitioners will calculate Merger-related savings by comparing GMP's actual operations and maintenance ("O&M") costs to a baseline O&M cost that is based on a test period ("Base O&M Cost") and then adjusted each year for inflation. In years 1-8 post-Merger, GMP will recover the adjusted Base O&M Cost. In years 4-8, to the extent actual O&M is less than the adjusted Base O&M Cost, GMP will return 50 percent of the difference to customers as Merger-related savings. At the start of the ninth year following the Merger, GMP will only recover its actual O&M expense and GMP will thereby pass on to customers 100 percent of Merger-related savings.[10]

In Direct and Surrebuttal Testimony, IBM argued that all Merger-related savings should be passed on to customers. Among other things, IBM was concerned that the shared savings plan did not have a risk-return feature similar to plans approved in other utility mergers and acquisitions, nor was Petitioners' shared savings methodology based on bonafide and verifiable merger savings.[11]

The savings sharing plan in the DPS/GMP MOU, as amended by the IBM MOU, represents a reasonable compromise between Petitioners' proposed plan and IBM's response to Petitioners' plan, as well as a significant improvement from Petitioners' original proposed plan. The GMP/DPS MOU savings sharing plan, as amended, will benefit customers in several ways.

First, the GMP/DPS MOU shared savings plan provides customers with a guaranteed level of savings in the first three years following the Merger. This is consistent with

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[10] Exh. Petitioners-DPS-1 at ¶¶ 27-28.

[11] Docket No. 7770, *supra*, Direct Testimony of Michael P. Gorman (January 20, 2012) at 3-4 ("Gorman Direct Testimony").

shared savings plans approved in utility mergers in other regulatory jurisdictions, which have often conditioned merger approvals on guaranteed savings commitments from the surviving utility.[12] It also appropriately places on the Petitioners' the risk of achieving any investor savings in the first three years.[13]

Second, the GMP/DPS MOU shared savings plan significantly increases the customers' share of savings in the first six post-Merger years. Pursuant to the GMP/DPS MOU's shared savings plan, the net present value ("NPV") of savings to customers will be more than $37 million after year six, more than double the NPV of savings after year six under Petitioners' initial plan.[14] Thus, the MOU ensures that customers receive significant benefits in the earlier post-Merger years, when savings will be more easily identifiable and measurable.

Third, the IBM MOU amends the GMP/DPS MOU by providing that, if total Merger savings to customers does not equal or exceed $144 million at the end of year ten, GMP will propose a plan for Board approval to return any shortfall to customers through a bill credit.[15] This is a needed improvement from Petitioners' initial plan, which provided that a shortfall would be returned pursuant to a plan proposed by GMP and approved by the Board. The MOU thus ensures that customers will get the full $144 million benefit reflected in rates, while also avoiding future uncertainty over the method for returning the value of any shortfall.

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[12] Id. at Exh. IBM-MPG-1.

[13] Id. at 3.

[14] *See* Exh. Board-12.

[15] Exh. Pet-Cross-15 at ¶ 4.

Fourth, the GMP/DPS MOU establishes a process under which the Board, the Department and other interested parties will be provided the information necessary to verify GMP's claimed savings. GMP will file a base rate adjustment on August 1, 2012, to be effective on October 1, 2012. This filing will include GMP's Base O&M Cost. Pursuant to the GMP/DPS MOU, any party in this proceeding may comment on the Base O&M Cost. In addition, GMP will be required to file an annual report of Merger-related savings for ten years and thereafter as directed by the Board.[16] These provisions will provide all interested parties with the ability to measure and verify Petitioners' claimed savings, and thereby ensure that the savings claimed by Petitioners are in fact the result of the Merger.

For all of the foregoing reasons, the shared savings plan in the GMP/DPS MOU, as amended by the IBM MOU, will provide efficiencies that will benefit customers, and will therefore promote the general good of the State of Vermont.

B. The IBM MOU Promotes the General Good by Providing a Regulatory Process Before the CVPS and GMP Non-Residential Rates and Tariffs Are Integrated

The GMP/DPS MOU, as amended and supplemented by the IBM MOU, contains reasonable tariff and rate integration procedures that ensure the CVPS and GMP rates and tariffs will be integrated in a fair and timely manner. Pursuant to the GMP/DPS MOU, the GMP and CVPS residential tariffs will be integrated on October 1, 2012, and all other GMP and CVPS tariffs will be integrated after the Board approves a fully allocated rate design for all customer classes. The GMP/DPS MOU requires a traditional cost of service review proceeding for rates effective on or after October 1, 2014. GMP is required to file a request for a revised rate design

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[16] *See* Exh. Petitioners-DPS-1 at ¶¶ 25-26.

no later than October 15, 2014, and GMP and the Department have agreed to use "all reasonable efforts to assure that the proceeding is completed within nine months."[17] Assuming the proceeding is completed in nine months, new cost-based rates for all GMP and CVPS customers would be effective by July, 2015.

The IBM MOU clarifies that GMP will continue to serve IBM on GMP's C&I Transmission Service Rate. Further, as part of the rate design proceeding, GMP has agreed to "account for the differences in costs associated with serving load at the distribution and transmission level, and [to] account for the differences in costs associated with the particular voltage levels at which transmission service is provided."[18]

Although IBM initially preferred a more aggressive schedule for rate and tariff integration, the process and schedule in the MOU is nevertheless reasonable and will satisfy important State goals. Under IBM's initial position in its Direct Testimony, the rate design proceeding would be completed in early- to mid-2014. Pursuant to the MOU, new rates will be effective in mid-2015. The MOU thus only extends IBM's proposed schedule by about 12 months. The additional time will allow GMP to collect a full year of smart meter data and then incorporate that data into the cost of service study and rate design proceeding. The smart meter data will provide a more complete picture of the costs of serving particular customer classes, and therefore allow for a more accurate cost of service study and rate design.[19]

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[17] Id. at 32.

[18] Exh. Pet-Cross-15 at ¶ 6.

[19] Docket No. 7770, *supra*, Direct Testimony of Robert Griffin (September 2, 2011) at 5-9.

In addition, the IBM MOU provides rate stability to IBM by clarifying that IBM will remain on its current rate until completion of the rate design proceeding.[20] When combined with the GMP/DPS MOU's guaranteed shared savings in years 1-3, IBM is provided with a greater level of certainty and stability on its electricity costs than it would otherwise have for at least three years.

Moreover, the IBM MOU supplements tariff and rate integration provisions in the GMP/DPS MOU by providing that the unique service characteristics for large customers will be recognized and incorporated into the new rate design. IBM is currently the only customer in the GMP or CVPS service territories taking service directly from the 115 kV high-voltage transmission system. As noted in the Direct Testimony of Dr. Alan Rosenberg, due to IBM's size, service voltage and load factor, the costs to serve IBM differ substantially from the costs to serve all other customers in Vermont.[21] The IBM MOU recognizes this generally accepted cost of service principle and commits GMP to incorporating it into its new rate design.

C. The Financial Integrity Provisions in the GMP/DPS MOU and the IBM MOU Promote the General Good by Protecting GMP's Cash Flow and Credit Rating

The GMP/DPS MOU contains several financial integrity provisions that will keep GMP separate and distinct from its affiliates, and protect GMP's cash flows and credit rating. Among other things, GMP must: (1) maintain separate financial books, records, reports, and bank accounts cash flows from its affiliates; (2) record transactions with affiliates based on the

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[20] Exh. Pet-Cross-15 at ¶ 5.

[21] Docket No. 7770, *supra*, Direct Testimony of Dr. Alan Rosenberg (January 20, 2012) at 5.

actual cost of the product or service; (3) report affiliate transactions on an annual basis to the Department and the Board; (4) notify the Board and the Department of certain planned transactions or distributions that will result in the equity portion of GMP's capital structure varying by more than three percentage points from the most-recently approved structure or cause GMP's unused, short-term borrowing capacity to fall below $25 million; and (5) notify the Board and the Department of GMP's intent to transfer more than 10 percent of total stockholder equity to its parent or affiliates over a 12-month period. Further, GMP agreed that the proceeds of any new financing that is secured by GMP assets which either (1) are included in Vermont rate base, or (2) have costs recovered through rates regulated by the Board, must be used for utility purposes.[22]

Pursuant to the IBM MOU, GMP also agreed that it will not write loans to affiliate companies that are not rate regulated under a U.S. or Canadian jurisdiction. For loans between GMP and affiliates with rate regulations by Canadian rate regulators, GMP will seek Board approval before any loans are written.[23]

These financial integrity conditions are similar to the conditions that the Board approved when Gaz Metro acquired GMP in Docket No. 7213. In that Docket, the Board held that conditions similar to those discussed above "will help ensure that GMP would remain sufficiently capitalized after the acquisition to provide adequate service quality and reliability," and provided "important safeguards to protect customers from any inappropriate affiliate

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[22] Exh. Petitioners-DPS-1 at ¶ 22.

[23] Exh. Pet-Cross-15 at ¶ 7.

transactions."[24] Consistent with IBM's Direct Testimony, these provisions will also provide "greater assurance that the cash flows produced by regulated utility operations will be used first and foremost for the cash needs of the utility."[25] In addition, restrictions on GMP's cash movement "will also support [GMP's] credit ratings in that it should minimize the effects on [GMP's] credit rating from the risk created by Gaz Metro's non-regulated business units."[26] The Board should therefore rely upon the financial integrity provisions in the GMP/DPS MOU and IBM MOU as part of a determination that the Merger promotes the general good.

D. GMP's Commitment to Revive the Virtual Choice Program Promotes the General Good by Allowing Large Customers to Participate in Energy Markets

In the IBM MOU, GMP committed to file a request for Board re-approval of the GMP Virtual Choice Plan in a manner substantially similar to the Plan approved by the Board in Docket No. 7435. This revival of the Virtual Choice program addresses one of the Board's concerns with respect to utility mergers – whether the merger will cause impairment of or obstruct competition in the energy markets.

The Virtual Choice Plan approved in Docket No. 7435 allowed large industrial and commercial customers to participate in the procurement of power supply to meet individual customer loads. Under a Virtual Choice program, customers with loads in excess of 25 MW can direct GMP to purchase or sell forward blocks of energy in amounts not exceeding the customer's projected load. If purchases and sales are not equal, GMP will settle the difference

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[24] Docket No. 7213, *supra*, Order (March 26, 2007) at 31-33.

[25] Gorman Direct Testimony at 19.

[26] Id.

on the customer's behalf through transactions with the ISO-New England. As the Board noted in its Order Approving Outline of GMP Virtual Choice Plan, because the financial effects of the transaction (including administrative costs) are passed on to the customer, "GMP and its other ratepayers will be protected from any particular adverse financial effects arising from the program."[27]

The Virtual Choice program addresses one of the Board's concerns with respect to utility mergers – impairment or obstruction of competition in energy markets – because it is designed "to facilitate customer control of energy costs, maximize flexibility in structuring transactions, avoid any impact on [GMP's] other customers, and minimize complexity and uncertainty."[28] The MOU therefore promotes the general good of the State of Vermont by requiring GMP to seek re-approval of the Virtual Choice Plan in a manner substantially similar to the Plan approved by the Board in Docket No. 7435.[29]

E. GMP's Commitment to Improve the Reliability Standard for Customer Outage Duration by at Least 10 Percent Ensures GMP will Act as a Fair Partner in its Transactions with Vermont Citizens

When Gaz Metro acquired GMP in 2007, the Board considered service quality and reliability as a significant component of its consideration as to whether the surviving corporation would act as a fair partner in its transactions with Vermont citizens. As part of the

[27] Docket No. 7435, *Petition of Green Mountain Power Corporation for Approval of an Outline of Virtual Choice Plan*, Order Approving Outline of GMP Virtual Choice Plan (May 30, 2008) at 4.

[28] Docket No. 7435, *supra*, Cover Letter to Outline of Virtual Choice Plan (June 22, 2007) at 1-2.

[29] GMP filed its request for Board approval of the Virtual Choice Plan on April 13, 2012.

GMP/DPS MOU, GMP has committed to amend its Service Quality and Reliability Plan to improve the reliability standard for customer outage duration by at least 10 percent. The IBM MOU supports this provision of the GMP/DPS MOU.

In 2007, when Gaz Metro acquired GMP, the Board recognized GMP's "history of providing satisfactory service and reliability to its customers."[30] Since Gaz Metro acquired GMP, the service quality and reliability has remained consistent and satisfactory. With GMP's commitment to improve its customer outage duration reliability standard, service quality and reliability will only improve as a result of the Merger. This commitment also furthers Petitioners' expectation that, once the GMP and CVPS systems are operating on a single set of infrastructures and procedures, service quality will improve.[31] Improvement of the customer outage duration standard will further ensure that GMP continues to act as a fair partner in its transactions with its customers. Further, as the Board recognized in 2007, even if service quality problems were to arise in the future, "the Board could take a number of corrective actions that GMP would be required to implement in order to resolve those problems."[32] For these reasons, GMP's commitment to improve the reliability standard for customer outage duration ensures that GMP will remain a fair partner in its transactions with Vermont citizens, thereby demonstrating that the Merger will promote the general good of the State.

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[30] Docket No. 7213, *supra*, Order (March 26, 2007) at 29.

[31] Docket No. 7770, *supra*, Direct Testimony of Brian Otley (September 2, 2011) at 14.

[32] Id.

CONCLUSION

For the foregoing reasons, IBM respectfully requests that the Board issue an Order approving the Merger subject to the terms and conditions in the IBM MOU.

Dated: April 23, 2012
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Respectfully submitted,

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