

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Docket No. 7770

Joint Petition of Central Vermont Public Service Corporation (“CVPS”), Danaus Vermont Corp., Gaz Métro Limited Partnership, Gaz Métro inc., Northern New England Energy Corporation (“NNEEC”) for itself and as agent for Gaz Métro Limited Partnership’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 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.

SUMMARY OF PREFILED TESTIMONY OF TODD A. ALLARD

January 20, 2012

Todd A. Allard provides testimony regarding the concerns of Omya Inc. with regard to the transaction proposed for approval in the captioned matter, specifically regarding the rates to be paid by Omya Inc., the savings indicated to be derived from the transaction, the sharing of those savings, the “windfall sharing” mechanism ordered by the Public Service Board in Dockets No. 6460/6120, and other matters of concern regarding the provision of electric service to Omya Inc.

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PREFILED TESTIMONY OF TODD A. ALLARD

1 **Q. Please state your name and address.**

2 **A. Todd A. Allard, 9987 Carver Road, Suite 300, Cincinnati, OH 45242.**

3 **Q. By whom are you employed and in what capacity?**

4 **A. I am employed by Omya Inc. as the Strategic Sourcing Manager – Energy**
5 **and Engineering. In that position, I am responsible for the sourcing and**
6 **purchasing of energy (including electricity, natural gas, fuel oil,**
7 **conservation programs, etc.) as well as project components related to**
8 **major projects under the supervision of the Regional Engineering group**
9 **in Cincinnati for Omya's Region Americas . Previously, until the sale of**
10 **its assets to Central Vermont Public Service Corporation ("CVPS") as**

1 approved in Docket No. 7660, I had general oversight for regulatory
2 matters involving the Vermont Marble Power Division of Omya Inc.
3 ("VMPD") and specifically for power supply, power planning, and rates.

4 **Q. Please briefly describe your educational background and**
5 **experience.**

6 A. I graduated from the University of Vermont in 1991 with a Bachelor of
7 Science degree in Civil Engineering. As a college student, I worked for
8 VMPD during the summer months conducting property audits for
9 purposes of VMPD's integrated resource planning ("IRP"). I also was
10 involved in and assisted with the planning and engineering of various
11 projects for VMPD. I became employed full-time by VMPD following my
12 graduation from college and I was involved in a variety of projects for
13 VMPD, including the engineering of transmission and distribution
14 projects, line relocations, generating facility maintenance and
15 enhancement projects, as well as involvement in VMPD's IRP. I also
16 have had extensive involvement in power supply and power purchase
17 planning and implementation as well as regulatory matters.

18 **Q. Have you participated in or provided testimony to the Public**
19 **Service Board in other dockets?**

20 A. Yes, I have, on numerous occasions in connection with dockets particular

1 to VMPD (*e.g.* Dockets No. 6260, regarding an emergency pole removal
2 and replacement; 7378, regarding replacement of Unit #2 at VMPD's
3 Beldens Station; and 6960 and 7328, regarding VMPD's IRPs approved in
4 those proceedings); and in connection with generic dockets that involved
5 all of the Vermont utilities (*e.g.* Docket No. 6181, regarding net
6 metering). I provided testimony in support of VMPD's request to revise
7 its retail rates, which was approved in Docket No. 7598. I also provided
8 testimony in support of the sale of VMPD's assets to CVPS, which was
9 approved by the Board in Docket No. 7660 and consummated on
10 September 1, 2011.

11 **Q. Please provide an overview or summary of your testimony.**

12 **A.** My testimony is given in connection with Omya's concerns regarding the
13 rates it will pay for electricity if the transaction proposed in this docket is
14 approved, the savings projected to be derived from the transaction (and
15 particularly the merger of CVPS with GMP and the integration of the
16 service territories of those two utilities), and the proposed sharing of
17 those savings between ratepayers and investors.

18 **Q. What are Omya's concerns regarding the rates it will pay for**
19 **electricity if the Board approves the transaction proposed here?**

20 **A.** While there are several specific issues, our overarching concern is simple:

1 we do not know what rates Omya will be paying going forward.

2 Throughout the prefiled testimony, Petitioners have discussed many
3 issues and have presented various numbers including projected savings,
4 but what they have not done is project rate impacts. While there are
5 many issues to consider in this Docket, all of them important, I think it is
6 fair to say that rate impacts is one of, if not the most, significant issues to
7 many of the parties. Further, it seems very difficult, at best, to evaluate
8 the transaction without knowing its impact on rates. Petitioners have
9 suggested that average rates of the Companies are similar, and have
10 implied that the transaction could reduce rates through savings, but in
11 the end, the customers are left to assume what the rate impacts might be.
12 Further, and specific to Omya's situation, unlike general residential and
13 commercial rates, industrial rates (and some of the more complicated
14 commercial rates) can vary greatly depending on what tariff a customer is
15 served under (both from company to company and within one company).
16 Unlike a residential customer who knows that he will be served by the
17 residential rate following the transaction, Omya does not know, long
18 term, what tariff it will take service under: will it be a CVPS rate 5 based
19 tariff, a GMP rate 63 based tariff, some combination of the two (or other)
20 tariffs, or something completely new? While on average the rates of

1 industrial customers in the GMP and CVPS territories are close, the
2 difference between the tariffs is significant. Not knowing the "starting
3 point" (i.e., tariff) makes determining the impact of this transaction on
4 Omya impossible. If, for example, Omya is to be served under an existing
5 GMP tariff, that will increase its costs and the savings from the proposed
6 transaction might not be sufficient to eliminate the additional costs
7 caused by the tariff change, resulting in increased costs for Omya from
8 the transaction. If, on the other hand, the basis of Omya's rates is the
9 current CVPS rate 5 or possibly another GMP rate, the proposed cost
10 savings from the transaction may have the effect of reducing costs for
11 Omya. We simply do not know.

12 **Q. Are there any other specific factors that come into consideration**
13 **in connection with Omya's current service?**

14 **A.** Yes. In the negotiation of the final Purchase and Sale Agreement for the
15 sale by Omya of VMPD's assets, in addition to a significant reduction in
16 the purchase price, specific provision was made for Omya to be served on
17 CVPS's Rate 5 for a period of 6 years, and Omya would not seek a
18 separate tariff arrangement for service to the so-called Verpol Plants,
19 Omya's mineral processing facilities.

20 **Q. What was the significance of that arrangement?**

1 A. That arrangement specifically was bargained for and was set forth in the
2 Amended and Restated Purchase and Sale Agreement ("Restated PSA"),
3 which came about as a result of a Memorandum of Understanding among
4 Omya, CVPS, the Department of Public Service ("Department" or "DPS")
5 and the Town of Proctor. While I will not discuss the specific negotiations
6 that culminated in the Restated PSA, several points are evident from a
7 comparison of the Restated PSA with the original Purchase and Sale
8 Agreement ("PSA") filed in Docket No. 7660. For one thing, Omya agreed
9 to accept a purchase price for the assets being sold that was \$3,750,000
10 less than the terms initially agreed with CVPS. For another, the original
11 PSA contained a provision by which CVPS and Omya would use
12 reasonable efforts to explore the development of a separate tariff or an
13 arrangement that would limit the cost of electricity to the Verpol Plants
14 on the basis that Omya (and particularly its mineral processing facilities)
15 would be (and now is) CVPS's largest single customer. In the Restated
16 PSA, as I have noted, Omya agreed not to seek a special tariff but to
17 continue to be served on CVPS Rate 5 for six years. The significance of
18 the point is that, while Omya believed (subject to Board approval) it
19 would have been entitled to a reduction in rates because of the size and
20 nature of its load (by reason of which CVPS's average costs of service

1 would have been reduced), it gave up that opportunity (as well as a
2 significant portion of the purchase price for the VMPD assets) and agreed
3 to remain on CVPS Rate 5 for six years. Based upon what we have been
4 able to learn from the Petition, Prefiled Testimony, and responses to
5 discovery, it appears that at best, Omya may have the benefit of CVPS
6 Rate 5 for about 2 years after the acquisition of CVPS by GMP and there
7 is no certainty of any specific rate thereafter.

8 **Q. Well, aren't utility rates subject to change over time in any event?**

9 **A.** Yes, of course they are, and CVPS recently received approval for a rate
10 increase (including to its Rate 5), but Omya bargained for service under a
11 known rate class (CVPS Rate 5) and any changes in CVPS rates are and
12 would have been subject to Board review and approval. Further, rate
13 changes (under the arrangement and specifically Rate 5) would be caused
14 by cost changes which would, again, be subject to Board review and
15 approval. Therefore, under the current Rate 5 service, Omya can expect
16 its rates to change with costs associated with serving the Rate 5
17 customers. In other words, Rate 5 is the established "baseline" and the
18 rates will increase or decrease proportional to costs. Following the
19 acquisition, the "baseline" Omya now has with Rate 5 is no longer certain.
20 Omya could be served under a different tariff which would change its

1 costs significantly. In Docket 7666, Omya agreed to give up certain funds
2 and opportunities to seek a reduction in rates (for a prescribed period) in
3 connection with the sale of the VMPD assets to CVPS and it is now
4 unclear how that aspect of the deal will be affected.

5 **Q. Have you performed any analysis of the costs Omya would pay**
6 **for electric service to its Verpol Plants under the GMP rate**
7 **structure?**

8 A. Yes, I have. I have calculated the cost of electric service under CVPS
9 Rate 5 in comparison to that under GMP Rate 63 (which is the current
10 rate that Omya would fall under). The cost to Omya of electric service
11 under GMP Rate 63 is estimated to be in the order of \$3 million more per
12 year. Over the ten year planning horizon utilized by Petitioners in this
13 proceeding, that corresponds to an increase in cost to Omya of \$30
14 million.

15 **Q. Does your calculation take into account the rate increase**
16 **recently implemented by CVPS?**

17 A. Yes.

18 **Q. Is it not correct that Petitioners are promising savings from the**
19 **consummation of the transaction proposed here that will benefit**
20 **ratepayers?**

1 A. Yes, that is what Petitioners say, over and over, but when pressed, they
2 have been unable or unwilling to explain how those benefits will translate
3 into specific rates or even rate classes, particularly for the largest
4 customers.

5 **Q. Do you believe it is appropriate for the Board to consider and**
6 **decide issues regarding rates in a docket involving the**
7 **acquisition of a utility?**

8 A. As a general matter, that is a policy issue for the Board to decide, but I
9 offer a couple of thoughts for consideration. First, an approval of the
10 transaction and a determination that it is in the public good would, at
11 minimum, seem to indicate that the structure of the deal and the costs
12 associated with it are prudent. This would seemingly include any
13 sharing mechanism that is part of the acquisition, and certainly
14 Petitioners could be expected to take that position. If those "costs" are
15 approved and found prudent in the acquisition docket, all that is left in a
16 subsequent rate case is the allocation of those costs among customers. If
17 issues regarding rates truly are held off until a rate case, all costs,
18 savings, etc. associated with the transaction would have to be ruled in in
19 the later rate case and not in the acquisition docket. That does not
20 appear to be what Petitioners seek here. Secondly, in Docket No. 7660,

1 we specifically included 30 V.S.A. § 225 and consideration of the rate
2 impacts caused by the acquisition there under consideration. Knowing
3 that rate impacts would be of keen interest, the parties in that docket
4 acknowledged the rate impacts and proposed a structured transition in
5 rates and the Board approved proposed changes in rates and revised
6 tariff sheets so the affected parties would know what their rates would be
7 going forward. Accordingly, the concerns that Omya has here, that are
8 not addressed by the Petitioners, could (and I submit should) be
9 addressed so the parties and the Board can make an informed decision.

10 **Q. At the outset of your testimony, you indicated concerns**
11 **regarding the savings projected to be derived from the**
12 **transaction proposed by Petitioners. Please explain.**

13 **A.** First, let me say that Omya is not opposed to the proposed transaction in
14 general. We do believe that there is potential for efficiency gains and, as
15 have been stated by the Petitioners, savings that are substantial.
16 However, there are items that we simply do not have sufficient
17 information about and specific issues about which we have concerns.
18 First, regarding the estimated savings, Petitioners take the position that
19 only a portion of the savings in operations and maintenance projected to
20 accrue from the proposed acquisition, merger, and integration of CVPS

1 with and into GMP over the course of ten years should inure to the
2 benefit of ratepayers (specifically, about \$144 million of the Petitioners
3 projected total savings of \$223 million) with the balance to the benefit of
4 the investor, GMP's ultimate parent. (It should be noted that Petitioners
5 do allocate to ratepayers 100 percent of all savings, should the
6 transaction be approved, after the initial ten year period. *See*
7 A.DPS:PET.2-10.) Second, Petitioners appear to believe that the windfall
8 sharing mechanism ordered in Docket No. 6460/6120 is not necessary in
9 connection with this transaction because of savings created by this
10 transaction. However, I would point out that in Docket No. 6460/6120,
11 the Board stated "We emphasize, however, that 'Any such procedure [for
12 windfall sharing] must ensure that the benefit provided to ratepayers is
13 in addition to (rather than a replacement for) other benefits appropriately
14 assigned to ratepayers at the time of the future sale, merger or
15 acquisition. In other words, when an event that triggers the windfall
16 sharing mechanism occurs, the first step is to determine what benefits
17 ratepayers are otherwise entitled to as the result of the sale or merger.
18 Once this determination has been made, the windfall sharing mechanism
19 will apply to any remaining proceeds above book-value." (Footnotes
20 omitted). (As Petitioners have described it "And once that determination

1 [of the benefit going back to customers, as a consequence of any
2 acquisition of the company would be] is made, you add on the 21 million
3 dollars of value." Transcript of Workshop held October 14, 2011, page 31,
4 lines 18-20.) However, in discovery, Petitioners, while admitting that
5 was the Board's requirement, state that "The value of the shared savings
6 plan and other benefits accruing to CVPS customers exceeds, and
7 therefore meets, the windfall sharing amount requirements." (See
8 A.OMYA:PET.2-18.1) The amount of the windfall sharing as calculated
9 by Petitioners is \$20,307,596. (See AARP:PET:1-2) When that amount is
10 added to the savings that otherwise can accrue to ratepayers, the total
11 potential savings that could be used to benefit ratepayers is in the order
12 of \$244 million, or about \$100 million more than proposed.

13 **Q. Are you suggesting that the Board should not approve the**
14 **Petition unless Petitioners agreed to provide a total ratepayer**
15 **benefit of approximately \$244 million?**

16 A. I am not specifically proposing that, but I believe it is a position that
17 could be advocated and that the Board must consider. I realize
18 Petitioners take the position that (a) while ratemaking for electric
19 utilities in Vermont is generally cost-based, other processes for setting
20 rates do exist and presumptively, on that basis, the savings (i.e.

1 reductions in cost) should not all flow to ratepayers, (b) the triggering
2 event for purposes of the windfall sharing mechanism is the acquisition
3 and merger of CVPS into GMP, not the integration of the two utilities,
4 and (c) the savings share proposed for ratepayers is greater than the
5 windfall sharing amount, so the latter requirement is met in any event.
6 (*See, e.g.*, A.DPS:PET.1-50) My concerns with those arguments, and
7 factors I believe the Board must consider, are that: as the Petitioners
8 themselves recognize, rates generally are cost based; even in the context
9 of alternative ratemaking, electric utilities are to be incented to provide
10 least-cost energy service to their customers; the Board has not
11 established a doctrine of allowing shared savings in utility acquisitions
12 (indeed, "Petitioners are not aware of any examples in Vermont" (*see*
13 A.OMYA:PET.1-14.4)); and as the Petitioners have indicated, it is the
14 integration of the two utilities that provides the basis for the most
15 significant cost savings. However, to suggest that one must consider the
16 transaction without integration as a baseline of sorts, seems illogical.
17 Were the utilities to propose only the acquisition and merger, and forgo
18 the integration, it seems to me that the Board would have to consider the
19 prudence of that approach and, in particular, the fact that it would leave
20 the savings that otherwise would be gained by integration on the table

1 and out of the reach of ratepayers. It seems that a transaction such as
2 that would be difficult to prove prudent. After all, the Petitioners
3 themselves discuss the long-held belief that consolidation in the electric
4 industry in Vermont would bring significant efficiencies and savings and
5 people have been asking why this has not been done before now. (*See,*
6 *e.g.,* Transcript of Workshop held October 14, 2011, page 10, lines 16-21.)

7 **Q. Does this complete your testimony?**

8 **A. Yes, it does.**