

**STATE OF VERMONT  
PUBLIC SERVICE BOARD**

Amended Joint Petition of Central Vermont )  
Public Service Corporation, Danaus )  
Vermont Corp., Gaz Métro Limited )  
Partnership, Gaz Métro inc., Northern New )  
England Energy Corporation for itself and )  
as agent for Gaz Métro Limited )  
Partnership's parents, Green Mountain )  
Power Corporation and Vermont Low )  
Income Trust for Electricity, Inc., for )  
approval of: (1) the merger of Danaus into )  
and with Central Vermont, (2) the )  
acquisition by 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. )

**Docket No. 7770**

**PRINCIPAL BRIEF OF OMYA INC.**

Omya Inc. (hereinafter "Omya"), by and through its attorneys, Kenlan, Schwiebert, Facey & Goss, P.C., hereby files its Brief in the above-captioned proceeding.

Omya currently is served under CVPS's Rate 5 tariff. *See Prefiled Direct Testimony of Todd A. Allard (hereinafter "Allard Testimony") at 7.* In the negotiation of the final Purchase and Sale Agreement for the sale by Omya to CVPS of the assets of the Vermont Marble Power Division ("VMPD") in Docket No. 7660, specific provision was made for Omya to be served on CVPS's Rate 5 for a period of 6 years, or through September 1, 2017. *See Allard Testimony at 6.* This

arrangement specifically was bargained for at arm's length, and was set forth in the Amended and Restated Purchase and Sale Agreement, which was a direct result of a Memorandum of Understanding among and between Omya, CVPS, the Department of Public Service ("Department" or "DPS"), and the Town of Proctor (the "Omya/CVPS Agreement"). *See id. at 7.* The Omya/CVPS Agreement was approved by this Board in Docket No. 7660.

In part because of the value to Omya of having a definite rate "locked in" for six years (subject to periodic adjustments subject to PSB approval), Omya agreed to accept a purchase price for the VMPD assets that was \$3,750,000 less than the terms initially agreed to with CVPS. *See id.* Also, even though Omya believed that it would have been entitled to a reduction in rates because of the size and nature of its load (by reason of which CVPS's average costs of service would have been reduced), Omya agreed not to seek a special tariff arrangement for service to the so-called Verpol Plants, Omya's mineral processing facilities, on the understanding that it would continue to be served on CVPS Rate 5 for six years. *See id. at 7-8.* CVPS's agreement to serve Omya under Rate 5 through September 1, 2017 was an essential, bargained-for term within the larger context of the sale approved by the Board in Docket No. 7660. *See id.*

When Omya entered the Omya/CVPS Agreement, it had no indication that CVPS would be sold or merged with another utility company. Omya's principal concern in this Docket, as expressed via Todd Allard's Prefiled Testimony, is

twofold. First, Omya wants confirmation that the Omya/CVPS Agreement will be honored by the Petitioners in the event that the proposed merger is approved. Second, assuming that the Omya/CVPS Agreement is honored, Omya is concerned that Petitioners have given no indication as to what rates will apply after service under CVPS Rate 5 ends on September 1, 2017.

At various times during the proceeding in this Docket, Petitioners have addressed at least the first concern. For instance, in his Rebuttal Testimony, Robert J. Griffin acknowledges Omya's concern about the ongoing effectiveness of the Omya/CVPS Agreement, and testifies that "GMP does not intend to terminate or otherwise affect the Omya/CVPS agreement." *See Rebuttal Testimony of Robert J. Griffin on Behalf of the Petitioners, at p. 10, lines 5-6.* Also, on March 26, 2012, the Petitioners and the Department entered into a Memorandum of Understanding ("DPS MOU"), which resolved a number of disputed issues between those parties. At Paragraph 35, the Petitioners and the Department address the Omya/CVPS Agreement, and agree that: "Nothing in this MOU is intended to have any effect on the settlement approved between the DPS and OMYA in Docket 7660." *See Memorandum of Understanding Between the Petitioners and the Vermont Department of Public Service at 15, ¶ 35.*

Petitioners and/or the Department thus have assured Omya that they "do not intend" to "terminate" or "affect" the Omya/CVPS Agreement. Omya is confident that the Petitioners and the Department are not trying to be evasive by using this

language. More specifically, Omya understands from these statements that the Omya/CVPS Agreement will be honored in accordance with its terms by the post-merger entity.

Nevertheless, Omya cannot help but have a lingering concern given the circumstances of this Docket. In order for the Omya/CVPS Agreement to be honored post-merger, it will be necessary for the post-merger entity to retain CVPS Rate 5 even after CVPS itself ceases to exist. Given Petitioners' assurances (quoted above), Omya gathers that this will be done. However, the fact remains that there has been no express representation in this Docket that "CVPS Rate 5," as such, will survive the merger and/or will not be substantially modified as a result of it. Indeed, Petitioners have indicated that all GMP and CVPS rates will be "integrated" in a rate case to be commenced in 2014, which seems to suggest that the "old" CVPS rates will be eliminated. These somewhat incongruent statements lead Omya to file this Brief to seek an order from this Board to clarify the status and viability of the Omya/CVPS Agreement post-merger so as to prevent any future doubt or question as to what was intended to be done vis-à-vis that Agreement in this Docket.

The issue is critical to Omya. If Omya currently was a GMP customer, it would fall under GMP Rate 63. *See Allard Testimony at 9.* The cost to Omya of electric service under GMP Rate 63 would be approximately \$3 million more per year than Omya currently pays under CVPS's Rate 5. *See id.* Over the ten year

planning horizon utilized by Petitioners in this proceeding, that corresponds to an increase in cost to Omya of \$30 million. *See id.* In this Docket, Petitioners have failed to project what the surviving tariffs will be, or what impacts these changes will have to industrial customers such as Omya – either after the 2014 tariff integration proceeding, or (assuming CVPS Rate 5 persists) after 2017.

Omya objects to the imposition of any rate higher than CVPS Rate 5 prior to September 1, 2017. The terms of the Omya/CVPS Agreement assure Omya of service under Rate 5, and the Petitioners and the Department have confirmed in this Docket that the Omya/CVPS Agreement will not be affected or terminated as a result of the merger. These assurances are redundant of black-letter merger law, which requires the post-merger entity to honor the Omya/CVPS Agreement pursuant to its terms. *See* 11A V.S.A. § 11.06(a)(3) (“When a merger takes effect. . . the surviving corporation has all liabilities of each corporation party to the merger”); *see also Joint Petition of Green Mountain Power Corporation, etc.*, Docket 7213, (Vt. Pub. Serv. Bd. Nov. 1, 2006) (citing 11A V.S.A. § 11.06(a)(3) and noting that creditor’s interest “will be unaffected by the proceeding [because] the transaction that the Board has been asked to review and approve includes a merger between GMP and Northstars under which the surviving corporation, GMP, will retain all liabilities owed to WFTC”).

These legal and factual assurances aside, given the importance to Omya of removing any and all doubt, Omya seeks an order from this Board confirming that

it will get the benefit of its bargain, and will not see a substantial, and potentially crippling, increase in its electricity costs as a result of the proposed merger. Any Order from the Board approving the transaction proposed in this Docket should make clear the following:

1. The post-merger entity shall be subject to and bound by the terms and conditions of the Omya/CVPS Agreement; and,
2. Either:
  - a. CVPS Rate 5 shall survive the merger and continue to apply to Omya through September 1, 2017, subject to the benefit of savings derived from the merger and/or the integration of CVPS and GMP rates, and/or to such other adjustments as may be made to Rate 5 and to which Rate 5 customers, generally, would be entitled;<sup>1</sup> or,
  - b. If CVPS Rate 5 is eliminated as part of the merger or the anticipated rate case to be filed in 2014, Omya should be entitled to be served under the lowest industrial rate for which its service qualifies, provided that those terms are more favorable to Omya than the bargain struck under the Omya/CVPS Agreement; and:

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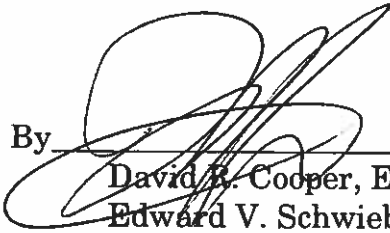
<sup>1</sup> In other words, Omya should be served by Rate 5, subject to any adjustments that may be made to it in the normal course and pursuant to the terms of the tariff.

3. Whether or not CVPS Rate 5 survives the merger, Omya is entitled to participate fully in the rate case that Petitioners expect to commence in 2014, both to ensure that CVPS Rate 5 is not adversely affected and to have its voice heard with respect to the rate that will apply after the Rate 5 period has ended.

DATED at Rutland, Vermont this 23<sup>rd</sup> day of April, 2012.

KENLAN, SCHWIEBERT, FACEY & GOSS, P.C.

By



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