

1 STATE OF VERMONT
2 PUBLIC SERVICE BOARD
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5 Joint Petition of Central Vermont Public Service Corporation)
6 (“CVPS”), Danaus Vermont Corp., Northern New England)
7 Energy Corporation (“NNEEC”) for itself and as agent for Gaz)
8 Metro Limited Partnership and its parents, Green Mountain Power)
9 Corporation (“GMP”) and Vermont Low Income Trust for)
10 Electricity, Inc. (“VLITE”), for approval of: (1) the merger of)
11 Danaus into and with CVPS; (2) the acquisition by NNEEC of)
12 CVPS and certain other Vermont companies; (3) the amendment)
13 to CVPS’s Articles of Association; (4) the merger of CVPS into)
14 and with GMP; and (5) the acquisition by VLITE of a controlling)
15 interest in Vermont Electric Power Company, Inc.)

Docket No. 7770

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19 **PREFILED TESTIMONY OF VINCENT ILLUZZI AS A RATEPAYER**

20
21 **January 20, 2012**

22
23 **Summary Of Prefiled Testimony**

24
25 Ratepayer Vincent Illuzzi hereby summarizes his prefiled testimony as follows:

26
27 First, I do not offer testimony on whether the merger should be approved. That issue
28 should be evaluated initially and fully by the Board. Only if that decision can be made,
29 based on clear evidence that is convincing to the Board should the issues I address be
30 considered. For purposes of my testimony, I have assumed the merger will be approved,
31 not because I endorse it, but because I am not in a position to assess it. I am, however,
32 capable of assessing the impacts to VELCO if the merger is ultimately approved.

33 I believe the following issues should be addressed:

34
35 **(1) Planning and Reporting**

36 Requiring VELCO, as a condition of merger approval, to provide annual public enhanced
37 reporting requirements that summarize how VELCO’s Board of Directors through

1 VELCO's activities have promoted the general good of the state in the preceding year,
2 along with public dissemination of the budget and strategic plans. Such reports should
3 also be filed with the relevant legislative committees of jurisdiction, along with other
4 transmission planning documents created under 30 V.S.A. § 218c(d) and in collaboration
5 with the Vermont System Planning Committee.

6

7

8 **(2) Open Access**

9 While FERC, through Order No. 888, requires open access transmission, VELCO's
10 articles and bylaws, as a condition of merger approval, should incorporate this
11 requirement as purpose and commitment of the corporation.

12 **(3) General Good Directors And Option Of State of Vermont To Acquire A 51% 13 Ownership Interest In VELCO**

14 General Good Directors, as a condition of merger approval, should comprise 51 percent
15 of VELCO's Board of Directors. A 38 percent share will not ensure that the interests of
16 Vermont ratepayers are sufficiently protected against corporate actions and decisions
17 calculated to serve the interest of GAZ METRO.

18 In order to support a 51% position on the Board of Directors, the State of Vermont should
19 be afforded the option to acquire a 51% ownership interest in VELCO over a period of
20 time deemed appropriate by available financing opportunities, such as private activity
21 revenue bonds.

22 VELCO is upon information and belief a \$1 billion for-profit corporation with
23 approximately \$500 million in debt with a return on investment of up to 14%, and current

1 at approximately 11.5%. The state can borrow money at incredibly low rates, making
2 this an opportune investment vehicle with a guaranteed rate of return.

3 If the acquisition of CVPS by GMP is about the retail side of the business, and not
4 VELCO, this suggestion should not be met with resistance by GAZ METRO.

5 In Canada, it is routine for business concerns to partner with governmental entities in
6 carrying out functions which both generate profits and serve the public interest. The idea
7 of a state-GAZ METRO relationship will not be viewed as an alien concept by GAZ
8 METRO.

9 The state missed a once in a lifetime opportunity to purchase the hydroelectric dams on
10 the Connecticut and Deerfield Rivers, either on its own or in partnership with a for-profit
11 corporation. It should not miss this equally important opportunity as well.

12 **(4) Vermont Transmission Nominations Board**

13 The composition of a state Transmission Nominations Board (TNB) should be comprised
14 of seven, not nine members, as follows:

15 two selected by the Speaker of the House;

16 two selected by the Vermont Senate's Committee on Committees;

17 two selected by the Governor; and,

18 one selected jointly by the six other board members upon their appointment.

19 In no event shall the CEO of VELCO be one of the General Good Directors.

20 **(5) VELCO As A Public Benefit Corporation ("B" Corporation)**

21 VELCO should, as a condition of merger approval, be converted into or formed as a
22 public benefit "B" corporation. This action would allow for-profit growth but be

1 consistent with one or more "specific public benefit" purposes, and have those purposes
2 institutionalized in VELCO's articles and bylaws.

3 Under Vermont's B corporations act, which became effective July 1, 2010, specific
4 public benefit should, as a condition of merger approval, include:

- 5 a. providing low income or underserved individuals or communities with beneficial
6 products or services;
- 7 b. promoting economic opportunity for individuals or communities beyond the creation
8 of jobs in the normal course of business;
- 9 c. preserving or improving the environment;
- 10 d. improving human health;
- 11 e. promoting the arts or sciences or the advancement of knowledge;
- 12 f. increasing the flow of capital to entities with a public benefit purpose; and
- 13 g. the accomplishment of any other identifiable benefit for society or the environment.

14 **(6) Public Trust; Payment To Department of Public Service**

15 The state's share of VELCO's income, as a condition of merger approval, should be paid
16 directly to the Department of Public Service, which could then develop a low-income
17 program through the administrative rule making process.

18 **(7) Public Information; Open Meeting Law; Right To Attend Meetings**

19 VELCO, as a condition of merger approval, unless prohibited or preempted by federal
20 law, should be subject to the provisions of 1 V. S. A. Section 310 et seq., Vermont's
21 open meeting law, because as a B Corporation, VELCO will exist in part to achieve
22 social, economic, environmental and other benefits to society and as such, "in the conduct

1 of the people's business . . . (is) accountable to them pursuant to Chapter I, Article VI of
2 the Vermont Constitution." 1 V. S. A. Section 311(a).

3 **(8) Public Information; Access To Public Records**

4 VELCO, as a condition of merger approval, unless prohibited or preempted by federal
5 law, should be subject to the provisions of 1 V. S. A. Section 315 et seq., Vermont's
6 public records law, because as a B Corporation, VELCO will exist in part to achieve
7 social, economic, environmental and other benefits to society and as such, "it is in the
8 public interest to enable any person to review and criticize their decisions even though
9 such examination may cause inconvenience or embarrassment." 1 V. S. A. Section 315.

10 **(9) Release From Liability And Confidentiality**

11 Release general good directors from liability and confidentiality in making good faith
12 declarations to the Department and Board when, in their independent judgment,
13 declarations directly promote the public good.

14 **(10) Broader Proposals Addressing Impact of Energy Conglomerates**

15 VELCO, as a condition of merger approval, should notify the Department of Public
16 Service and the Public Service Board of notice of intent to "change control" six months
17 prior to the filing of a petition to ensure rigorous scrutiny of vertically-integrated
18 companies and their parent and affiliated companies.

19 VELCO, as a condition of merger approval, should be required to annually disclose its
20 income and expenses.

21

PREFILED TESTIMONY

22 **Q. Please state your name, occupation and address.**

1 A. My name is Vincent Illuzzi and I am a Vermont electric ratepayer purchasing
2 electricity from Vermont Electric Cooperative and Green Mountain Power
3 Corp. I also serve as a member of the Vermont Senate, where I serve on the
4 Economic Development, Housing and General Affairs Committee as chair.
5 My office address is 38 Water Street, Orleans, Vermont.

6 **Q. Please outline your background regarding utility oversight and**
7 **regulation.**

8 A. I have no expertise in utility oversight and regulation, other than general
9 knowledge acquired through my service in the Vermont General Assembly. I
10 become acquainted with Vermont utilities, and their oversight and regulation
11 as a state senator over the past 32 years. I have learned about the impact of
12 electric rates on the commerce of the state, the impacts of construction and
13 location of high voltage transmission lines, and the need for affordable and
14 reliable electricity. There is an adverse impact on Vermont's economy when
15 the state has relatively high electric rates, noting the disastrous consequences
16 of decisions made by GMP and CVPS utility executives in the early 1990s,
17 when they signed 20 year power purchase contracts that in the long run cost
18 Vermont ratepayers ten of millions of dollars in excessive rates and which
19 could have bankrupted both utilities but for ratepayer bailouts.
20 I have learned that Vermont utilities are very well represented at the State
21 House by a legion of lobbyists and lawyers, always advancing the interests of
22 their shareholders, at times in conflict with the interest of Vermont ratepayers,
23 e. g., the "stranded cost" request for relief of the 1990s. Because VELCO and

1 GMP are private corporations, we often are not made aware of the options
2 available to them when engaging in the business of buying, transmitting and
3 distributing electricity. Monitoring utility activities at FERC, ISO-NE and
4 the Board makes it difficult to follow the actions of these businesses in a
5 comprehensive way.

6 In August 2011, I was in Halifax, Nova Scotia and met with one of the
7 province's elected members of the Canadian Parliament. He summarized for
8 me the frustration of some eastern Canadian provinces to develop
9 hydroelectric generation at Lower Churchill Falls in Labrador and sell some
10 of that power into New England and perhaps New York. He told me about the
11 legal battles fought by the Quebec transmission grid owners or operators to
12 deny them access to the established transmission grid through Quebec, which
13 is the only developed route to sell the power they hope to produce into the
14 states. Their inability to bring electricity to the market has limited efforts to
15 finance the project, resulting in a request to the federal government to provide
16 loan guarantees. Although Quebec law requires "open access" to the grid,
17 arguments have been made by those in Quebec that the grid is at capacity and
18 therefore it cannot accommodate new power generation sources, unless
19 upgraded at prohibitively great expense by the eastern provinces.

20 **Q. Why did you intervene in this case.**

21 A. VELCO is the interstate highway of electric transmission in Vermont. If I
22 introduced legislation to sell Interstates 89 and 91 to a for-profit Canadian
23 corporation, some would think I have gone around the bend. If our electric

1 transmission grid is sold to a for-profit Canadian corporation, I'm fearful that
2 there will be adverse consequences to all Vermont ratepayers, and particularly
3 adverse to Vermont businesses that use relatively large amounts of electricity.
4 This petition presents for many of us a once in a lifetime opportunity to
5 harness the benefits that can flow from a restructured transmission grid that
6 operates both in the interest of the public and its owners.

7 I intervened to ensure that there was a challenge to the proposed petition from
8 a ratepayer's perspective concerned about future electric costs, to ensure we
9 have low electric rates given our close proximity to Quebec from the
10 perspective of Vermont's economy, and to ensure that VELCO is operated in
11 the interest of Vermonters.

12 I do not pretend to know whether the merger itself is in the public good. I am
13 assuming the other parties will address whether a merger is appropriate. I
14 offer my testimony that if this merger is allowed to proceed that certain
15 requirements be imposed on the resulting entities to assure benefits for
16 Vermonters.

17 **Q. What about the application concerned you?**

18 A. I reviewed GMP's petition and in particular the "VELCO Conveyance,"
19 which was vaguely described in the application. Although represented in self
20 serving press releases to the Vermont news media as a form of "divestiture,"
21 it seemed obvious that the "divestiture" proposed does not constitute the
22 promised meaningful relief from the harm that could result from
23 consolidating the control of GAZ METRO over VELCO.

1 Even though the post-merger shares held by the merged company would
2 represent approximately the same interest in VELCO as the pre-merger
3 ownership share of CVPS alone, the fact is that the merger eliminates
4 independent CVPS and independent GMP (presently controlled by Gaz
5 metro) as counterweight's to one another's dominant shareholder interests.
6 VLITE as proposed would not be a full-fledged utility with independent
7 economic interests to pursue in connection with transmission expansion.
8 VELCO makes day to day decisions that can financially make or break the
9 relatively small municipal and cooperative utilities around Vermont, each of
10 which relies on VELCO for its power supply.

11 **Q. What difference does it make if VLITE as proposed isn't really**
12 **independent?**

13 Potentially, quite a big difference. For example, a small utility that supports
14 VELCO management decisions most likely will have a system upgrade or
15 equipment purchase socialized by the transmission system because it can be
16 categorized as a "transmission" expense, resulting in relatively no expense to
17 that utility's ratepayers. On the other hand, that same small utility, if not in
18 favor with VELCO management, might end up paying for the upgrade or
19 equipment purchase on the backs of its 1,000 to 2,000 ratepayers, relatively
20 small utilities whose rates would spike if forced to cover relatively expenses
21 costs. Another example is that a favored utility could be offered a "too good
22 to be true" power deal in exchange for a favorable vote on a new transmission
23 line request.

1 Although non-controversial VELCO decisions may be made by “consensus”
2 of its Board, as is often the case, many of the larger and more expensive
3 transmission investment decisions affecting Vermont’s utilities have proven
4 controversial. The reliability project from central Vermont to South
5 Burlington through Addison County was planned behind closed doors and
6 then announced to the public and it was substantially approved as proposed.
7 In the future those decisions would potentially be made in Quebec. There
8 needs to be more “sunlight” in terms of future state-wide decisions.

9 **Q. What information do you have that VELCO will make decisions that will**
10 **not primarily benefit Vermonters?**

11 A. I can’t predict the future, but I can draw some inferences from what I
12 know about the obligations of a corporation’s board of directors, the fight
13 over access to the grid in Canada by competing power suppliers, GAZ
14 METRO’s relationships in Quebec, and some action which was contemplated
15 in 2009. I have an example.

16 There is a map which was brought to my attention that was created by or for
17 VELCO (VT TRANSCO and VETCO) dated January 27, 2009. It bears File
18 No. FJE-006. The map depicts two new 450 kV DC transmission lines
19 through Vermont.

20 The map was prepared by VELCO when Northeast Utilities, with Hydro
21 Quebec and NSTAR as partners, was having discussions with other utilities
22 and holding their first public discussions around the Northern Pass
23 Transmission Project in New Hampshire. The map’s purpose was to depict

1 potential re-routes of the northern New Hampshire portion of the project
2 through existing Vermont utility corridors. VELCO, Hydro Quebec and/or
3 NSTAR would argue these routes would be shorter, less costly to construct
4 per mile, less environmentally intrusive and provide tax benefits to the towns
5 through which they pass.

6 The primary benefit of the lines, however, under VELCO's existing corporate
7 structure and mandate, would be to serve the financial interest of VELCO's
8 major owner, GAZ METRO, and its potential partners, Hydro Quebec and
9 NSTAR. The secondary benefit would be to serve the electrical needs of
10 Northeast Utilities and its customers in southern New Hampshire, Boston and
11 other parts of New England.

12 If not properly structure, construction of the lines would result in billions of
13 dollars in new revenue to GAZ METRO, Hydro Quebec, NSTAR and
14 Northeast Utilities, and the deal could be structured such that the interests of
15 Vermonters were down on the list of priorities with minimal benefits flowing
16 to them, and the deal could be structured so that revenues were greatly
17 diminished.

18 Based on publicly available information, the Northern Pass Transmission
19 Project has run into substantial opposition in New Hampshire. If not
20 approved, I can only conclude that VELCO, Hydro Quebec, NSTAR and
21 Northeast Utilities will resume discussions about a Vermont route and dust
22 off Map No. FJE-006.

1 Even if approved, as load demand in southern New England and New York
2 increases, it is inevitable that additional power lines will be proposed through
3 Vermont. The question is whether they will be constructed and maintained
4 for the primary benefit of Vermonters, or for GAZ METRO, its partners,
5 affiliates and subsidiaries.

6 The essential point is that the elimination of a significant, knowledgeable, and
7 competing owner of VELCO by the merger creates undue control over
8 decision making with respect to high voltage transmission in Vermont, even
9 if the stock holdings of the acquiring party consolidated as a result of the
10 merger are reduced to pre-merger levels. Such decisions have far reaching
11 effects on small regions within Vermont and even smaller towns and villages
12 of Vermont. Simply paying Vermont to be its corridor for Gaz Metro's
13 energy commodities is not a very convincing reason to approve this merger
14 when so many aspects of our society may be impacted by this merger in the
15 future, such as: proper regional and local planning, local land use controls,
16 impacts on local development patterns, potential health hazards to
17 Vermonters from large scale transmission lines, and possible disruption to
18 scarce agricultural areas and more.

19 This concern was recognized as real by the federal courts. See Yamaha
20 Motor Corp. v. FTC, 657 F.2d 971, 982 (8th Cir. 1981) ("Mere termination of
21 the joint venture would leave Brunswick as owner of 38% of Sanshin's stock.
22 Even without continued representation on Sanshin's governing board,
23 Brunswick could exert considerable influence over the corporate policy of

1 Sanshin, thus hindering the restoration of Yamaha as a potential competitor”);
2 Community Publishers, Inc. v. Donrey Corp., 892 F. Supp. 1146, 1178-1179
3 (W.D. Ark. 1995) (rejecting divestiture in favor of rescission of acquisition),
4 aff’d sub nom. Community Publishers, Inc. v. DR Partners, 139 F.3d 1180
5 (8th Cir. 1998).

6 Access to the electric transmission grid is as important to commerce today as
7 was access to the waterways 200 years ago. Ownership of the waters was
8 reserved to the people and held in public trust.

9 We don’t have to look far to see how access to the grid by its owners can be
10 used to deny competition and enrich its owners, partners and affiliates. The
11 battle continues between the eastern Canadian provinces and the owners of
12 the transmission grid in Quebec¹ over access to the transmission grid. The
13 Quebec grid owners claim that the transmission grid in Quebec is at capacity
14 and cannot handle any additional load beyond that carried by the system for
15 Hydro Quebec², which is owned by the Province of Quebec, and perhaps
16 other electric suppliers, although I am not knowledgeable enough to identify
17 others.

¹The government of Quebec is also sole shareholder of Hydro-Quebec, the provincial power utility whose 34,490 MW hydro-electric generation ranks Quebec fourth in the world for hydro generation. Hydro-Quebec paid the government of Quebec a dividend of C\$1.89 billion in 2010, according to The Globe and Mail.

²Hydro-Quebec owned half of Gaz Metro beginning in 1997 through a utilities holding company called Noverco, and sold to The Caisse in 2004. This is roughly the same amount of time Andre Caille, former CEO of Gaz Metro, was hired as Hydro-Quebec’s CEO. Caille’s successor, Thierry Vandal, was also a Gaz Metro executive before he assumed leadership of Hydro-Quebec in April of 2005. The head of Hydro-Quebec’s transmission wing, TransEnergie, is Andre Boulanger, also a former Gaz Metro executive.

1 The eastern provinces are attempting to develop a hydroelectric generation
2 project at Lower Churchill Falls. Those provinces, like Hydro Quebec, are
3 interested in selling electricity in southern New England. However, if the
4 eastern provinces can't get their electricity to market, the project will never
5 become reality, even with financial backing from the Canadian government.
6 Fortis³, a company based in one of the eastern provinces, attempted to
7 purchase CVPS, but after intervention by elected officials in Vermont and
8 perhaps other considerations, the merger agreement was terminated. As
9 reported by Fortis in a press release dated November 2, 2011⁴, on July 11,
10 2011, the Board of Directors of CVPS determined that the unsolicited
11 acquisition proposal from Gaz Métro Limited Partnership was a "Superior
12 Proposal," as that term was defined in the Merger Agreement between Fortis
13 and CVPS announced on May 30, 2011, and CVPS elected to terminate the
14 Merger Agreement in accordance with its terms. Prior to such termination
15 taking effect, the Merger Agreement provided Fortis the right to require
16 CVPS to negotiate with Fortis for at least five business days with respect to
17 any changes to the terms of the Merger Agreement proposed by Fortis. Fortis
18 agreed to waive such right in exchange for the prompt payment by CVPS to
19 Fortis of the \$17.5 million termination fee plus \$2.0 million for expenses as

³Fortis Inc. on its website describes itself as "the largest investor-owned distribution utility in Canada, serving more than 2,000,000 gas and electricity customers. Its regulated holdings include a natural gas utility in British Columbia and electric utilities in 5 Canadian provinces and 2 Caribbean countries. Fortis owns non-regulated hydroelectric generation assets across Canada and upper New York State. It also owns hotels and commercial real estate in Canada."

⁴Fortis Interim Management Discussion and Analysis: For the three and nine months ended September 30, 2011 Dated November 3, 2011

1 set forth in the Merger Agreement, thereby resulting in the termination of the
2 Merger Agreement. Fortis received the \$18.8 million (US \$19.5 million)
3 payment on July 12, 2011.

4 The upshot is that Gaz Metro through GMP will own 70% of Vermont's retail
5 electric customer base and, directly own about 40% of VELCO, and for the
6 reasons argued herein, effectively control a controlling interest in VELCO.
7 By effectively controlling VELCO, with its 40% ownership stake and other
8 leverages at its disposal, Gaz Metro will have the effective ability to block
9 other electric suppliers from selling electricity into and through Vermont. It
10 can use the same arguments used in Quebec, e. g., the system is at physical
11 capacity and upgrades will cost tens if not hundreds of millions. It will give
12 VELCO the ability to decide if, when and where to construct high voltage
13 transmission lines to move electricity produced by Hydro Quebec to southern
14 New England and New York, where there is substantial base load demand.
15 VELCO will also have in its control the future of every small municipal and
16 cooperative electric utility in Vermont.

17 An excellent news article detailing the relationship between the Province
18 of Quebec, Hydro Quebec, Gaz Metro and the goal to sell more electricity into
19 New England, and the struggle between Quebec and the eastern provinces, can be
20 found at this Vermont Digger article: Canadian Power Brokers Look To Transmit
21 Electricity To Points South, [http://vtdigger.org/2011/08/08/canadian-power-
22 brokers-look-to-transmit-electricity-to-points-south/](http://vtdigger.org/2011/08/08/canadian-power-brokers-look-to-transmit-electricity-to-points-south/)

1 **Q. What can and should be done through the merger review and approval**
2 **process to mitigate this competitive harm?**

3 A. To mitigate the competitive harm that would arise as a result of the
4 combination of the two dominant VELCO shareholders, VELCO should be
5 converted into a new model for corporate governance or, at a minimum, a
6 greater degree of divestiture and decentralization of control. Petitioners'
7 diffuse, unclear and paltry offer of alleged divestiture should be rejected
8 outright. It simply is not in the best interests of Vermont and its ratepayers.
9 The argument made in a FERC filing that "transmission is heavily regulated"
10 and should therefore receive lighter scrutiny with regard to competition issues,
11 was rejected in substance by the United States Supreme Court in Otter Tail
12 Power Co. v. United States, 410 U.S. 366 (1973) and has been consistently
13 rejected by courts ever since. Moreover, the Petitioners are not in a great
14 position to make that claim because one of the more significant issues
15 associated with control of VELCO is that VELCO, at least with respect to its
16 own stockholder utilities, does not have an open access transmission tariff
17 (OATT).⁵ It operates instead under the 1991 Vermont Transmission
18 Agreement ("VTA"), which most other utilities in Vermont appear to favor
19 keeping. The absence of an OATT (6) for in-state utilities significantly
20 undercuts reliance on regulation as rationale for avoiding more foreseeably

⁵The Commission's goal was to remove impediments to competition in the wholesale bulk power marketplace and to bring more efficient, lower cost power to the Nation's electricity consumers.

⁶Canada apparently has the equivalent of an OATT, but if the system is arguably at capacity, any upgrade to handle the additional capacity apparently must be at the expense of the entity seeking to transmit electricity over the transmission grid.

1 effective remedies to the merger-induced consolidation of Petitioners' control
2 over VELCO.

3 **Q. Why isn't your concern going to be addressed by the U. S. Federal**
4 **Energy Regulatory Commission?**

5 A. The Energy Policy Act of 2005, one of the crowning achievements of the
6 Bush 43 Administration, limited the FERC's decisional time from filing to
7 final order to 180 days, unless FERC finds, for good cause, that it requires
8 more time to decide the issues and issues an order to that effect. Sixty days
9 from filing to interventions; 120 days (maximum) from interventions to
10 decision. This amendment to Section 203(a)(4) of the Federal Power Act
11 was one of the many benefits bestowed on the investor-owned segment of
12 the industry by an administration very sympathetic and all too eager to do
13 the bidding of the Edison Electric Institute, the advocacy arm of IOUs.
14 One utility expert in Washington, D. C. with whom I consulted told me that
15 the impact of that federal law change had the effect of eviscerating federal
16 oversight of utility mergers and to shift the regulatory burden to the states,
17 some of whose regulatory commissions were long ago captured by the
18 interests they purportedly regulate.
19 My committee received testimony from ISO New England in either 2010 or
20 2011. Since September 11, 2001, ISO New England told us it is primarily
21 concerned with transmission reliability. All other issues by and large are
22 left to the states.

23

1 Q. **Please sum up your concern.**

2 A. With the purchase of CVPS comes the controlling interest in VELCO and the
3 potential that Gaz Metro/GMP and Hydro Quebec will have a lock grip on the
4 control and use of Vermont's only transmission grid.

5 This is not a temporary rate case. It will be with us for decades to come;
6 probably longer.

7 How VELCO is structured will in large part set the stage for the manner in
8 which electricity will be purchased, transmitted and distributed in Vermont,
9 and more importantly, how those actions will impact every Vermont ratepayer
10 as well as the economy of the state, for decades to come. It will impact how
11 the officers of Vermont companies – to be controlled by Gaz Metro –
12 participate in local and regional and even state government. Will their
13 positions on local, regional and state committees reflect local GMP concerns,
14 or Gaz Metro concerns and ideas for Vermont? Will we ever know?

15 I am pleased that the commissioner of the Department of Public Service
16 retained the services of former Board Chair Michael Dworkin to look at the
17 impact of the proposed merger on VELCO.⁷ I was told by the commissioner
18 that he was given free reign, independent of the commissioner, to make
19 recommendations regarding what conditions should be imposed regarding the
20 impact of the merger on VELCO. I accept those representations at face value

⁷The undersigned in October filed a motion with the Board for the appointment of an independent counsel to review the Gaz Metro/GMP acquisition of CVPS as it relates to control of VELCO. After meeting the filing deadline, the undersigned met with the governor and the commissioner of the Department of Public Service. Following that meeting, the undersigned requested that the motion to appoint independent counsel be held in abeyance until the Department developed its position relative to VELCO. The Board, in response, DISMISSED the Motion For Independent Counsel, although without prejudice.

1 and have no reason to dispute them. This free reign was to avoid the conflict
2 which I alleged in my petition seeking independent counsel.

3 Although he does not address the merger per se, Mr. Dworkin's
4 recommendations, in my judgment, demonstrate a sincere effort by the
5 governor and the Department to develop an independent assessment of the
6 adverse impact the merger will have on the control of VELCO. Therefore, I
7 will not renew my motion to for appointment of independent counsel at this
8 time.⁸

9 However, I don't think Mr. Dworkin's recommendations go far enough to
10 ensure that the public will be the primary beneficiary of the proposed merger,
11 noting that the board must find that the proposed merger is in the public good,
12 not just in the financial interest of GAZ METRO and CVPS's executives and
13 stockholders.

14 Thus, the Board needs to carefully scrutinize the proposed merger as would the
15 U. S. Department of Justice in an antitrust case:

16 " . . . to protect consumers while otherwise allowing the merger to proceed,
17 appropriate remedies may include a divestiture of assets (to limit the merged
18 firm's ability to use the combined assets to harm competition) or limitations on
19 the firm's conduct (to ensure that consumers will not be harmed by
20 anticompetitive behavior.)"

21 Antitrust Division Policy Guide To Merger Remedies, U. S.

22 Department of Justice, Antitrust Division, June 2011, p. 2

⁸I would, however, request that the Board permit the other signatories to the original motion to intervene and petition for independent counsel to be free to raise and assert their own concerns and requests, including now that Mr. Dworkin's testimony has been filed, to move separate and apart from me to appoint independent counsel.

1 By way of illustration, the U. S. Department of Justice has published a policy
2 guide to merger remedies. As noted in Footnote No. 1 on page one:

3 For simplicity of exposition, this Policy Guide uses the phrase ‘preserving
4 competition’ throughout, which should be understood to include the concept of
5 restoring competition or enhancing consumer welfare, depending on the specific
6 facts of the transaction and its proposed remedy. For example, in the case of
7 consummated mergers, the Division will seek a remedy that will effectively
8 restore competition to the relevant market, including, when appropriate,
9 completely unwinding a transaction.

10 (emphasis supplied)

11 Antitrust Division Policy Guide To Merger Remedies, U.
12 S. Department of Justice, Antitrust Division, June 2011, p.
13 1, fn. 1

14 I have no objection, based on available information, to the Gaz Metro/GMP
15 purchase of CVPS’s retail distribution system.

16 But for the aforementioned reasons, as well as the reasons set forth in my
17 previous filings with the Board, which I incorporate by reference, I believe that
18 giving Gaz Metro direct and effective control over VELCO will lessen access to
19 the transmission grid by any electric supplier except Hydro Quebec (9), will
20 lessen competition in the form of different power suppliers selling electricity into
21 Vermont and New England, and threaten the ability of the eastern provinces to

⁹A majority of Gaz Metro is (or was) owned by The Caisse de Depot et Placement du Quebec (known as The Caisse), an international public pension investment firm whose board is appointed by the government of Quebec. The chairman of the board for The Caisse, a former Gaz Metro executive named Robert Tessier, is also chairman of the board for Green Mountain Power.

1 develop Lower Churchill Falls and competitively sell electricity into Vermont
2 because there will be no ready access to transport the power into New England.
3 Perhaps Lower Churchill Falls will never materialize. However, there may be
4 other wholesale electric suppliers in New York or in the region who will can also
5 be denied access to the grid, which will be effectively owned and controlled by
6 GAZ METRO, so that in one fashion or another it serve the needs of GAZ
7 METRO, Hydro Quebec and the Province of Quebec.

8

9 For these reasons, the Board should reject the proposed petition relating to the
10 VELCO conveyance in its present form.

11 **Q. Do you agree with Mr. Dworkin's recommendations?**

12 A. Yes, except with regard to the number of general good directors. He has made
13 several constructive suggestions that the Board should impose by way of
14 conditions. But I don't think he goes far enough.

15 **Q. What additional conditions do you propose?**

16 A. My ten suggestions below should be viewed as complimenting and
17 supplementing the recommendations of Mr. Dworkin. They are not in order of
18 priority.

19 **(1) Planning and Reporting**

20 As Professor Dworkin points out, many states have passed laws "restructuring"
21 the vertically integrated electric industry by requiring utilities to divest generation
22 and open their markets to some degree of retail competition. Vermont, on the
23 other hand, has retained a vertically integrated utility structure. Vermont utilities,

1 however, own very little generation. Also, the state has maintained significant
2 regulatory authority over electric companies, particularly with respect to planning
3 and rate setting.

4 Nevertheless, events such as the repeal in 2005 of the Public Utility Holding
5 Company Act of 1935 (a federal consumer protection law that regulated the
6 parent or holding companies of electric and gas utilities), have led to the rapid
7 growth, consolidation, and complexity of the utility industry and that growth may
8 be outpacing the ability of local regulators to regulate effectively.

9 I request that the Board enhance regulatory oversight of Vermont's transmission
10 utility by requiring VELCO, as a condition of merger, to provide enhanced
11 reporting. For example, Professor Dworkin suggests an annual report directly
12 from VELCO's Board of Directors to the PSB and DPS, summarizing the ways in
13 which VELCO's activities have promoted the general good of the state in the
14 preceding year, along with public dissemination of the budget and strategic plans.

15 I recommend that such reports should also be filed with the relevant legislative
16 committees of jurisdiction, along with other transmission planning documents
17 created under 30 V.S.A. § 218c(d) and in collaboration with the Vermont System
18 Planning Committee.

19 **(2) Open Access**

20 While FERC, through Order No. 888, requires open access transmission,
21 VELCO's articles and bylaws should reflect this commitment. Doing so would
22 enhance the Board's ability to prevent anticompetitive behavior.

23 **(3) General Good Directors**

1 General Good Directors should comprise 51 percent of VELCO's Board of
2 Directors. A 38 percent share with a right of first refusal in the event of future
3 mergers and acquisitions would not eliminate the possibility of corporate
4 influence on future political decisions.

5

6 In order to support a 51% position on the Board of Directors, the State of
7 Vermont should be afforded an opportunity to acquire a 51% ownership interest
8 in VELCO over a period of time deemed appropriate by available financing
9 opportunities, such as private activity revenue bonds.

10 VELCO is upon information and belief a \$1 billion for-profit corporation with
11 approximately \$500 million in debt with a return on investment of up to 14%, and
12 current at approximately 11.5%. The state can borrow money at incredibly low
13 rates, making this an opportune investment vehicle with a guaranteed rate of
14 return.

15 If the acquisition of CVPS by GMP is about the retail side of the business, and not
16 VELCO, this suggestion should not be met with resistance by GAZ METRO.

17 In Canada, it is routine for business concerns to partner with governmental
18 entities in carrying out functions which both generate profits and serve the public
19 interest. The idea of a state-GAZ METRO relationship will not be viewed as an
20 alien concept by GAZ METRO.

21 The state missed a once in a lifetime opportunity to purchase the hydroelectric
22 dams on the Connecticut and Deerfield Rivers, either on its own or in partnership

1 with a for-profit corporation. It should not miss this equally important
2 opportunity as well.

3 If addressed, corporate growth that does not promote the general good of the state
4 could happen simply by attrition.

5

6

7 **(4) Vermont Transmission Nominations Board**

8 The composition of a state Transmission Nominations Board (TNB) should be
9 comprised of seven, not nine members, as follows: two selected by the Speaker
10 of the House; two selected by the Vermont Senate Committee on Committees;
11 two selected by the Governor; and one selected jointly by the six other board
12 members upon their appointment.

13 Members of the TNB should serve for three-year terms, and may serve
14 consecutive terms if re-appointed.

15 The CEO of VELCO in no event should be one of the General Good Directors.

16 **(5) Public Benefit Corporation**

17 Professor Dworkin proposes, for consideration, making VELCO a public benefit
18 "B" corporation. I agree. In fact, I think it's essential.

19 This would get around the likely opposition to the cooperative model from the
20 larger utilities who probably would not like, understandably, small municipal
21 utilities having the same voting power as the other larger members.

22 A "B" corporation would allow for-profit growth but consistent with one or more
23 "specific public benefit" purposes, and those purposes should be institutionalized.

1 Under Vermont's B corporations act, which became effective July 1, 2010, and
2 which was approved by my committee, specific public benefits should include:

- 3 a. providing low income or underserved individuals or communities with
4 beneficial products or services;
- 5 b. promoting economic opportunity for individuals or communities beyond the
6 creation of jobs in the normal course of business;
- 7 c. preserving or improving the environment;
- 8 d. improving human health;
- 9 e. promoting the arts or sciences or the advancement of knowledge;
- 10 f. increasing the flow of capital to entities with a public benefit purpose; and
11 g. the accomplishment of any other identifiable benefit for society or the
12 environment.

13 **(6) Public Trust; Payment To Department of Public Service**

14 The state's share of VELCO's income, as a condition of merger approval, should
15 be paid directly to the Department of Public Service, which could then develop a
16 low-income program through the administrative rule making process.

17 Giving the state's share of VELCO funds directly to the DPS rather than a
18 nonprofit entity will ensure the condition is strictly followed. DPS could then
19 develop a low-income program through the rulemaking process of Chapter 25 of
20 Title 3.

21 **(7) Public Information; Open Meeting Law; Right To Attend Meetings**

22 VELCO, as a condition of merger approval, unless prohibited or preempted by
23 federal law, should be subject to the provisions of 1 V. S. A. Section 310 et seq.,

1 Vermont’s open meeting law, because as a B Corporation, VELCO will exist in
2 part to achieve social, economic, environmental and other benefits to society and
3 as such be mindful that, “in the conduct of the people’s business . . . (it is)
4 accountable to them pursuant to Chapter I, Article VI of the Vermont
5 Constitution.” 1 V. S. A. Section 311(a).

6
7 **(8) Public Information; Access To Public Records**

8 VELCO, as a condition of merger approval, unless prohibited or preempted by
9 federal law, should be subject to the provisions of 1 V. S. A. Section 315 et seq.,
10 Vermont’s public records law, because as a B Corporation, VELCO will exist in
11 part to achieve social, economic, environmental and other benefits to society and
12 as such, “it is in the public interest to enable any person to review and criticize
13 their decisions even though such examination may cause inconvenience or
14 embarrassment.” 1 V. S. A. Section 315.

15 **(9) Release From Liability And Confidentiality**

16 General good directors should be released from liability and confidentiality in
17 making good faith declarations to the Board and to the Department when the
18 declarations, in their individual judgment, directly promote the public good.

19 **(10) Broader Proposals Addressing Impact of Energy Conglomerates**

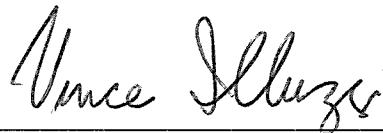
20 VELCO, as a condition of merger approval, should notify the Department and the
21 Board of notice of intent to “change control” six months prior to the filing of a
22 petition to ensure rigorous scrutiny of vertically-integrated companies and their
23 parent and affiliated companies.

1 VELCO, as a condition of merger approval, should be required to annually
2 disclose its income, expenses and earnings.

3 Q. Does this conclude your direct testimony?
4
5
6

7 A. Yes. Thank you.

8
9 DATED: January 20, 2012



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