

**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

Order Entered: _____

PROPOSED DECISION SUBMITTED ON BEHALF OF PETITIONERS

PRESENT: James Volz, Chairman
David C. Coen, Board Member
John D. Burke, Board Member

APPEARANCES: (See Attachment A)

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I. INTRODUCTION

In this Order, the Vermont Public Service Board (“Board”) approves, with conditions, the acquisition by Gaz Métro Limited Partnership (“Gaz Métro”) of Central Vermont Public Service Corporation (“Central Vermont” or “CVPS”), and the merger of Central Vermont with Green Mountain Power Corporation (“Green Mountain Power” or “GMP”) (collectively, the “Merger”), as proposed by the Petitioners.¹

The Merger presents an unprecedented opportunity for customers and the State of Vermont to receive significant, unique benefits. These include:

- improved customer service and reliability from merging adjoining service territories;
- a minimum of \$144 million in guaranteed customer savings over the first ten years alone, with more possible to the extent additional efficiencies are achieved;
- as much as \$500 million in savings expected after twenty years;
- creation of VLITE as a public benefit entity with significant ownership and participation in the governance of Vermont’s bulk transmission system;
- assurance that GMP will not be able to assert unilateral control over the Vermont transmission grid by transferring 38% of Vermont Electric Power Company, Inc. (“VELCO”) voting shares to VLITE;
- the investment of VLITE’s approximately \$1 million in VELCO dividends consistent with State policy on energy issues;
- an additional minimum of \$25 million in benefits for CVPS customers from investment in energy efficiency and community energy;
- additional commitments to Rutland, including support for job creation, downtown development, a solar city program, and renewable energy; and
- achievement of Merger-related benefits without layoffs or mandatory relocations.

¹ CVPS, Danaus Vermont Corp. (“Danaus”), Northern New England Energy Corporation (“NNEEC”), for itself and as agent for the direct and indirect upstream parents of Gaz Métro, Gaz Métro, Gaz Métro inc. (“GMI”), GMP, and Vermont Low Income Trust for Electricity, Inc. (“VLITE”). References to “GMP” or “Green Mountain Power” indicate the combined company after the merger with CVPS.

For these reasons, and as addressed in the findings and Order below, the Board concludes that the Merger will promote the general good and will not impair competition.

No party opposes the Merger. Various parties do, however, raise concerns with respect to: (1) the governance of VELCO after the Merger; (2) the Merger's effect on electric rates; (3) the allocation of Merger-related savings between customers and shareholders; and (4) the windfall sharing mechanism established by the Board in Docket Nos. 6460/6120 ("Windfall Sharing Mechanism").² These issues are addressed in the findings and Order, below.

II. PROCEDURAL HISTORY

On September 2, 2011, the Petitioners filed a petition seeking Board approval, pursuant to 30 V.S.A. §§ 104, 107, 109, and 311, of (1) the merger of Danaus into and with Central Vermont, (2) the acquisition by NNEEC 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 GMP, (5) the indirect acquisition by VLITE, NNEEC, and Gaz Métro of a controlling interest in Vermont Yankee Nuclear Power Corporation ("VYNPC"), VELCO, Vermont Transco LLC ("VT Transco"), and Vermont Electric Transmission Company, Inc. ("VETCO"), and (5) the transfer by CVPS to VLITE of approximately 33% of the VELCO Class B voting common stock and approximately 31.7% of the VELCO Class C non-voting common stock.

The Board convened a prehearing conference on September 21, 2011. At the prehearing conference, the Board granted the motion to intervene filed by AARP. On September 27, 2011, the Board issued a Prehearing Conference Memorandum and Scheduling Order, which adopted a schedule for the proceeding.³

On September 28, 2011, Petitioners filed an amended petition to include Gaz Métro and GMi as direct petitioners (rather than through NNEEC as agent), and Certifications under 30 V.S.A. § 107 on behalf of other upstream owners of NNEEC⁴ relating to the Board's jurisdiction

² See *Tariff Filing of Central Vermont Public Service Corp.*, Docket Nos. 6460/6120 (Vt. Pub. Serv. Bd. June 26, 2001) ("6460/6120 Order").

³ The Board subsequently revised the schedule, by Orders dated October 3, November 8, and December 16, 2011.

⁴ Valener Inc. ("Valener"), Noverco Inc. ("Noverco"), Caisse de dépôt et placement du Québec ("Caisse"),

and the authority of NNEEC to act as agent, based on the Board's Order of June 10, 2011, in Docket No. 7734.⁵

Board staff conducted a workshop on October 14, 2011.

On October 20, 2011, the Board issued a protective order for confidential treatment of information to be provided during discovery.

On November 1, 2011, the Board granted the motions to intervene of the following sixteen parties: International Business Machines Corporation ("IBM"); Omya Inc. ("Omya"); International Brotherhood of Electrical Workers, Local Union 300 ("IBEW"); Vermont Public Power Supply Authority ("VPPSA"); Vermont Ski Areas Association, Inc. ("Ski Vermont"); City of Burlington Electric Department ("BED"); VELCO, VT Transco and VETCO (collectively, the "VELCO Companies"); Vermont Electric Cooperative, Inc. ("VEC"); Washington Electric Cooperative, Inc. ("WEC"); Town of Stowe Electric Department ("SED"); Associated Industries of Vermont, Inc. ("AIV"); Renewable Energy Vermont ("REV"); Senator Vincent Illuzzi and forty-five other Vermont residents and ratepayers ("Group of 46 Ratepayers"); City of Rutland ("Rutland"); Vermont Public Interest Research Group ("VPIRG"); and Ampersand Gilman Energy LLC, Ampersand Gilman Hydro LP, Ampersand Gilman Biomass LLC and Ampersand Gilman Site Optimization LLC (collectively, "Ampersand").

The Board held a public hearing via Vermont Interactive Television at fourteen locations on November 1, 2011. Twelve members of the public spoke, six of whom spoke in favor of the proposed Merger. Some of the speakers expressed various concerns about the effects of the transaction, including: the economic impact on the region that would result from the loss of Central Vermont jobs, the need to secure a stable supply of affordable power, the loss of local control of Central Vermont, the Department of Public Service ("DPS" or "Department") Commissioner's potential conflict of interest, and control of VELCO and the state's transmission network.⁶

Capital d'Amérique CDPQ Inc. ("CDA"), Trencap L.P. ("Trencap"), Enbridge Inc. ("Enbridge"), and IPL System Inc. ("IPL").

⁵ See *Petition of Northern New England Energy Corporation*, Docket No. 7734 (Vt. Pub. Serv. Bd. June 10, 2011) at 10.

⁶ On November 14, 2011, the Board denied a petition filed by the Group of 46 Ratepayers requesting the

On February 24, and 29, 2012, the Department held meetings with the parties and other stakeholders to discuss proposals for Petitioners' satisfaction of the Windfall Sharing Mechanism.

On March 19, 2012, the Board issued a memorandum requesting responses to questions, of which thirty were directed to the non-CVPS Petitioners, sixteen to CVPS, six to the Department, and three to all other Non-Petitioners. Petitioners filed responses to the Board's questions on March 23, 2012 and March 27, 2012, and the Department filed responses on March 27, 2012. IBM and BED offered live testimony in response to the Board's questions during technical hearings.

The Board conducted technical hearings on March 21-22, 26-29, and April 3-4, 2012.

Several Memoranda of Understanding ("MOUs") were filed prior to the hearings. These included: (1) a January 13, 2012 MOU between GMP and VEC ("VEC MOU"); (2) a January 19, 2012 MOU between the Petitioners and Rutland ("Rutland MOU"); and (3) a March 5, 2012 MOU between the Petitioners and AIV ("AIV MOU"). Two MOUs were filed during technical hearings: (1) a March 26, 2012 MOU between the Petitioners and the Department ("DPS MOU"); and (2) an April 3, 2012 MOU between Petitioners, IBM, and the Department ("IBM MOU"). The substance of these MOUs is described below in the findings of fact.

Briefs were filed on April 23, 2012 and Reply Briefs were filed on May 4, 2012.

III. POSITIONS OF THE PARTIES AND COMMENTS OF THE PUBLIC

A. Petitioners

Petitioners contend that the Merger will promote the public good for various reasons. First, the Merger will allow for improved customer service and reliability from merging the adjoining GMP and CVPS service territories.

appointment of an independent counsel to represent the public interest, because Senator Illuzzi filed a letter on November 7, 2011, effectively withdrawing the petition. The Board stated, however, that the Group of 46 Ratepayers could file a new motion requesting that the Board appoint independent counsel once the group had an opportunity to review the position of the Department on the proposed Merger. The Group of 46 Ratepayers has not filed such a motion. In response to a January 20, 2012 request by Senator Illuzzi to withdraw his representation of the Group of 46 Ratepayers, the Board issued an Order on January 30, 2012 indicating it would accept his withdrawal only if another representative entered an appearance. No other person has entered an appearance on behalf of the Group of 46 Ratepayers.

Second, Petitioners contend that the Merger will result in projected customer savings of as much as \$500 million over the next twenty years. GMP will guarantee a minimum of \$144 million in customer operations and maintenance (“O&M”) cost savings alone over the first ten years, with more possible to the extent additional efficiencies are achieved. Petitioners propose to provide fixed annual guaranteed savings in years 1-3 to all customers, and percentage-based shared savings in years 4-8, with 100% of savings flowing to customers thereafter. Petitioners propose that 100% of all non-O&M savings, including those from capital expenditures, power supply, and other aspects of GMP’s operations flow directly to customers from day one of the Merger.

Third, Petitioners will achieve labor savings through retirements and natural turnover, and not through layoffs (other than executive officers) or mandatory relocations.

Fourth, Petitioners will maintain and build on CVPS’s prominent role in the Rutland area. This includes commitments to: maintain proportional levels of GMP’s employee base headquartered in the Rutland area; site GMP’s Headquarters for Operations and Energy Innovation Center in Rutland City or Rutland Town; locate a facility in downtown Rutland; establish a solar city program in Rutland County resulting in the Rutland area becoming the leading solar generation center in Vermont; create a \$100,000 “Open for Business” fund to be administered by the Downtown Rutland Partnership and a \$100,000 “Green Growth” fund to be administered by the Rutland Economic Development Corporation; and ensure that GMP will continue to play an active and permanent role in the community.

Fifth, Petitioners point out that Gaz Métro has twenty-seven years of experience in Vermont through its ownership of Vermont Gas Systems, Inc. (“VGS” or “Vermont Gas”) and Green Mountain Power. Accordingly, Petitioners contend that Gaz Métro is able to facilitate the Merger in a way that would not be possible for other companies. This, coupled with Gaz Métro’s approach of relying on experienced local management and providing them with the capital they need to expand and improve services to customers, makes Gaz Métro well-suited to facilitate creation, management, and operation of GMP.

Sixth, Petitioners will create a Community Energy & Efficiency Development Fund (“CEED Fund” or “Fund”). The CEED Fund will be modeled after the GMP Efficiency Fund

approved by the Board in Docket No. 7213. The CEED Fund will deliver at least \$25 million in benefits to CVPS customers.

Seventh, Petitioners propose the creation of VLITE as public benefit entity with significant ownership and participation in the governance of Vermont's bulk transmission grid. Petitioners propose to transfer to VLITE a portion of CVPS's ownership interest in VELCO, in order to prevent control of the VELCO Companies by GMP. Petitioners propose that VLITE will invest the dividends from its VELCO stock in a manner consistent with State policy on energy issues.

Petitioners also assert that the Merger will not impair competition because (1) Central Vermont and GMP do not compete for customers due to their exclusive retail franchises, and (2) the Federal Energy Regulatory Commission ("FERC") has reviewed the proposed Merger and concluded it will have no adverse impact on wholesale competition.

B. Department

The Department asserts that the Merger will promote the general good and should be approved, subject to the conditions agreed upon in the DPS MOU. The Department contends that the DPS MOU satisfies its concerns by requiring increased public participation in VELCO through VLITE, an increased portion of savings provided to customers, and increased efficiency benefits under the Windfall Sharing Mechanism. The DPS MOU also requires an increase in the reliability standard for customer outage duration in GMP's Service Quality and Reliability Plan ("SQRP"), includes measures designed to ensure GMP's financial integrity ("Financial Integrity Measures"), requires changes to the GMP and CVPS Alternative Regulation Plans, and includes provisions relating to tariff and rate integration.

C. Other Utilities

BED

BED does not oppose the Merger, provided any approval is conditioned to ensure that BED's competitive position relative to GMP is not undermined. BED also requests that the Agreement for Joint Ownership, Construction and Operation of the Highgate Transmission Interconnection ("Highgate Agreement") be amended to increase the level of operational control

by smaller utilities. BED proposes the following with respect to VELCO governance: (1) establishment of formal criteria for independent directors similar to what is used by ISO-New England; (2) reorganization of VELCO's Board as proposed by Petitioners, but with the addition of two seats for public power at large; and (3) creation of a new non-voting class of VELCO stock, which BED contends would serve the same purpose as Petitioners' proposed transfer of VELCO stock to VLITE. Finally, BED opposes any restrictions on GMP's ability to build generation, out of concern for the precedent it could set for other utilities.

SED

SED does not take a position on whether the Board should approve the Merger. SED expresses concern regarding its lack of direct representation on the VELCO Board. SED contends that Vermont utilities should have supermajority representation on the VELCO Board. SED proposes a seven-member VELCO Board with one representative from each of the following: GMP, VPPSA, BED, SED, VEC, WEC, and the VELCO CEO. SED also proposes implementing staggered terms and term limits for VELCO Board members. SED opposes the idea of having a public Board of Directors for VELCO. SED also opposes the creation of VLITE.

VEC

VEC does not take a position on whether the Board should approve the Merger. VEC does, however, request that the Board approve the VEC MOU, which addresses reliability issues concerning CVPS transmission facilities between Irasburg and East Fairfax within VEC's service territory. VEC also makes the following proposals with respect to VELCO governance: (1) GMP should not have majority ownership of VELCO stock or majority representation on the VELCO Board; (2) GMP should not have the ability to remove VELCO as manager VT Transco; (3) the current practice of having the VELCO Board elect the independent VELCO directors should continue; and (4) state ownership of VELCO/VT Transco is not desirable

VPPSA

VPPSA does not take a position on whether the Board should approve the Merger. VPPSA does, however, express concern that, after the Merger, the lack of another large utility in the State will remove a means of benchmarking performance of GMP. VPPSA agrees with BED that the Highgate Agreement must be amended. VPPSA notes that one of its members—the Village of Hyde Park Electric Department (“Hyde Park”)—has reached agreement with GMP, contingent on approval of the Merger, to negotiate in good faith to request Board approval to terminate a 3-Phase Service Agreement between Hyde Park and CVPS. VPPSA also submits that it has sought and obtained the assurance of GMP that its members’ existing agreements, understandings, and procedures with GMP and CVPS will remain in place and will not be changed or terminated without notice and an opportunity to negotiate. VPPSA also suggests that issues relating to VELCO governance can be addressed by limiting the power of GMP with respect to voting and the designation of independent directors.

WEC

WEC does not take a position on whether the Board should approve the Merger. WEC expresses concern regarding its lack of direct representation on the VELCO Board. WEC requests that the Board consider a public or quasi-public organization of the VELCO Board, or in the alternative, WEC requests that the Board adopt the Department’s recommendations regarding VELCO governance, and also: (1) give WEC and SED VELCO Board seats; (2) preclude VELCO’s CEO from being a voting member of the VELCO Board; and (3) convert VELCO into a B corporation. Finally, WEC requests that the Board condition approval of the Merger on measures to hold WEC harmless from any increase above the level at which WEC’s transmission rates would have remained under a stand-alone GMP transmission revenue requirement.

VELCO

VELCO’s CEO supports the Merger but VELCO expresses concern regarding changes to its governance. Specifically, VELCO urges that any changes to its governance structure be narrowly tailored to address the specific “tyranny of the majority” issue created by the Merger—i.e., the potential for the majority shareholder to obstruct the rights of others.

D. Large Customers

IBM

IBM expects that the Merger will benefit the State and electric customers to the extent Petitioners satisfy the commitments set forth in the IBM and DPS MOUs. IBM contends that the IBM MOU satisfies its concerns, due to the provisions that: (1) require that any deficiency in the \$144 million guarantee be returned to customers as a bill credit; (2) restrict GMP's ability to write loans to non-regulated affiliates; (3) require retention of GMP's Transmission Service Rate as a separate rate class and address cost distinctions concerning the rate in any class cost of service study; and (4) require GMP to request re-approval of the so-called GMP Virtual Choice Plan.

Omya

Omya does not oppose the Merger, and believes it presents the potential for substantial efficiency gains and savings. Omya expresses concern that the Merger may affect its ability to remain on Central Vermont's Rate 5 for six years, as agreed upon in connection with Central Vermont's purchase of Vermont Marble Power Division's ("VMPD") assets from Omya.

Ampersand

Ampersand does not oppose the Merger, but expresses concerns about its impact on rates, and the alleged increase in GMP's monopsony buying power. Ampersand recommends that the Board impose measures to address its concerns, including a rate freeze pending cost of service review, examination of GMP's cost of capital, a requirement that GMP competitively procure all future generation needs, and modification of GMP's Alternative Regulation Plan to increase operational efficiency targets and binding performance standards.

E. Public Interest Groups

AARP

AARP does not oppose the Merger, but maintains that the Windfall Sharing Mechanism requires Central Vermont shareholders to provide an up-front payment to customers at the time

the acquisition of CVPS occurs. It also criticizes various aspects of the Petitioners' proposed CEED Fund.

VPIRG

VPIRG supports the Merger. VPIRG did not file testimony or appear at technical hearings. In public comments, VPIRG requests that the Board require a minimum of 1/3 of VELCO Board and executive committee seats be held by representatives of the public, and that at least half of those seats be held by consumer advocates. VPIRG also requests that public members of the VELCO Board be nominated and selected by an independent, public process. Finally, VPIRG urges that VELCO's bylaws be amended to require it to act in the public interest and in support of distributed generation and renewable energy.

F. Trade Associations

REV and Ski Vermont

REV and Ski Vermont did not file testimony or appear at technical hearings.

AIV

AIV supports the Merger, pursuant to the conditions set forth in the AIV MOU, except that AIV reserves its right to engage in further negotiations related to VELCO governance issues.

G. Other

IBEW

IBEW does not oppose the Merger, but requests that the Board consider the Merger's impact on its members in its assessment of the public good.

Rutland

Rutland supports the Merger, based on the Rutland MOU, which confirms GMP's commitments to the Rutland area. Rutland asks that the terms of the MOU become conditions of approval of the Merger.

Group of 46 Ratepayers

The Group of 46 Ratepayers does not take a position on whether the Merger should be approved. It expresses concern with respect to the transfer of control over Vermont's transmission network to Gaz Métro. The Group of 46 Ratepayers makes recommendations regarding the VELCO governance structure, and advocates for thermal efficiency investments under the proposed CEED Fund.

IV. FINDINGS

A. Petitioners

1. GMP is an electric utility serving approximately 96,000 customers across Vermont with 205 employees. GMP owns or controls approximately 125 MW of generation and purchases approximately 240 MW of generation capacity under long-term power purchase agreements. Powell-Reilly pf. at 4 (Powell).

2. Central Vermont is the largest electric utility in Vermont, serving approximately 160,000 customers in 163 communities, with 515 employees. Its service territory includes much of central and southern Vermont, along with territories in northwestern and northeastern Vermont. Central Vermont owns in-state generation plants with a capacity of 74.6 MW. Powell-Reilly pf. at 4 (Reilly).

3. Green Mountain Power and Central Vermont are subject to the Board's jurisdiction under 30 V.S.A. §§ 201, 203. Am. Pet. ¶¶ 1-2.

4. Green Mountain Power and Central Vermont each own ten percent or more of the voting securities in VYNPC and in the VELCO Companies. VELCO is the managing member of VT Transco and therefore controls that company. Powell-Reilly pf. at 18 (Reilly).

5. Green Mountain Power and Central Vermont share contiguous service territories, maintain redundant infrastructure to support existing operations, and have a solid history of collaboration and partnership on key issues (such as power supply contracts and smart grid). Powell-Reilly pf. at 9 (Powell).

6. Gaz Métro, a Québec limited partnership, is a Montreal-based energy company and supplier of natural gas service in Québec. Gaz Métro serves close to 180,000 customers, with a total throughput of 191.9 billion cubic feet. Gaz Métro has twenty-seven years of

experience in Vermont through its ownership (through NNEEC) of VGS and GMP. Despars pf. at 2; Powell-Reilly pf. at 9 (Powell).

7. NNEEC is a wholly-owned subsidiary of Gaz Métro. Despars pf. at 2, 3.

8. NNEEC is a Vermont holding company formed to own Gaz Métro's energy-company investments (through operating-company subsidiaries) in the United States. NNEEC is the direct owner of Green Mountain Power and VGS. Despars pf. at 3.

9. In addition, NNEEC has incorporated Danaus, the corporate vehicle for the acquisition of Central Vermont. Despars pf. at 3.

10. Gaz Métro's general partner, GMi, a company incorporated pursuant to the laws of Québec, owns a 71 percent interest in Gaz Métro (70.99 percent directly and the other 0.01 percent indirectly through Gaz Métro Plus inc.). GMi has the exclusive power to administer, manage, control, and operate the business of Gaz Métro. Exh. GMP-1 at 2.

11. GMi, in turn, is wholly owned by Noverco, a company incorporated pursuant to the laws of Québec. Approximately 61.11 percent of Noverco's shares are owned by Trencap, a limited partnership created under the laws of Québec. Exh. GMP-1 at 2.

12. The general partner of Trencap is CDA, a wholly-owned subsidiary of the Caisse, the pension fund manager for the government of Québec. The Caisse owns approximately 59.64 percent of Trencap's units. The Caisse was created by an Act of the National Assembly of Québec (the "Caisse Act"). Exh. GMP-1 at 2.

13. The Caisse provides financing to Québec businesses seeking to expand by fostering economic growth and development in Québec. Tr. 3/26/12 at 10 (Tall).

14. The Caisse's management philosophy is that it does not manage on a day-to-day basis the companies in which it invests. Tr. 3/26/12 at 17 (Tall).

15. The remaining 29 percent of the limited partnership interests in Gaz Métro are owned by Valener, a publicly-traded company incorporated pursuant to the laws of Canada. Under the Limited Partnership Agreement of Gaz Métro, as long as Valener beneficially owns, directly or indirectly, at least 7.5 percent of the units of Gaz Métro, Noverco has undertaken to exercise its voting rights so that Valener has a number of nominees elected to the GMi Board of Directors in proportion to its unit holding in Gaz Métro. Valener currently has four representatives on GMi's eleven-member board of directors. Exh. GMP-1 at 3.

16. The remaining 38.89 percent of Noverco's shares are owned by IPL, a wholly-owned subsidiary of Enbridge, a publicly-traded company incorporated pursuant to the laws of Canada. The only Enbridge shareholder with a 5 percent or greater indirect interest in Gaz Métro is the Caisse, which through Noverco and GMi indirectly controls approximately 8.96 percent of Enbridge. Except for its ownership shares in Noverco, Enbridge has no significant rights in Noverco or Gaz Métro. Exh. GMP-1 at 3.

17. Valener, Noverco, the Caisse, CDA, Trencap, Enbridge, and IPL are the direct and indirect upstream parents of Gaz Métro. Each has certified to the appointment of NNEEC as its agent in this proceeding and acknowledged the jurisdiction of the Board in so far as it relates to the direct or indirect acquisition of a controlling interest of a company that is otherwise subject to the Board's jurisdiction. Certifications Under 30 V.S.A. § 107 (filed Sept. 28, 2011).

18. VLITE is a public benefit, nonprofit corporation established for the purpose of holding an ownership interest in VELCO and for administering the use of the dividends associated with its VELCO stock. Powell-Reilly pf. at 24 (Joint).

B. The Merger

(1) Details of the Merger Transactions

19. Pursuant to the Agreement and Plan of Merger, dated as of July 11, 2011, among Central Vermont, Danaus, and Gaz Métro (the "CVPS-Gaz Métro Merger Agreement"): (1) Danaus will merge into and with Central Vermont, with Central Vermont being the surviving corporation; and (2) NNEEC will acquire all of the shares of Central Vermont stock, thereby acquiring a direct controlling interest in Central Vermont and indirect controlling interests in the VELCO Companies and VYNPC. Powell-Reilly pf. at 7 (Powell), 18 (Reilly); exh. Pet.-Joint-2.

20. Pursuant to an Agreement and Plan of Merger between CVPS and Green Mountain Power, CVPS will merge into and with Green Mountain Power, with Green Mountain Power being the surviving corporation. Powell-Reilly pf. at 7 (Powell); exh. Pet.-Joint-3.⁷

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Exh. Pet.-Joint-3 consists of a form of Agreement and Plan of Merger.

21. The Petitioners seek to close on the acquisition of CVPS before June 30, 2012, and to close on the merger of Green Mountain Power and Central Vermont by September 30, 2012. Powell-Reilly reb. pf. at 11 (Powell); Powell-Reilly pf. at 7 (Powell).

22. Certain provisions in Central Vermont's Articles of Association related principally to preferred stock are no longer necessary if the acquisition is closed, and, in fact, at closing, the preferred stock will be redeemed. As a result, the CVPS-Gaz Métro Merger Agreement contemplates the amendment of Central Vermont's Articles of Association by eliminating such provisions. Powell-Reilly pf. at 16-17 (Reilly); exhs. Pet.-Joint-4-1 and 4-2.

(2) Effects of the Merger

a. Integration of Operations

23. The service territories of GMP and Central Vermont are highly compatible, both geographically and demographically, because both companies serve a mix of urban, suburban, and rural areas, both manage sub-transmission and distribution, and both own generation assets within their service territories. Otley pf. at 4.

24. GMP will be able to deliver lower rates and higher quality service than if the companies continued to operate as stand-alone entities because GMP and Central Vermont share contiguous service territories, maintain redundant infrastructure to support existing operations and already have a solid history of collaboration and partnership on key issues (such as power supply contracts and smart grid developments). Powell-Reilly pf. at 9 (Powell).

25. Due to the adjacent service territories and similar operating characteristics of the two companies, GMP and Central Vermont have worked together in the past and are familiar with each other's territories, safety procedures, and operating methods. Otley pf. at 4.

26. The integration of CVPS and GMP will occur in three phases. First, during the period before the CVPS shareholder vote approving the Merger, integration activities were focused on communications with an array of stakeholders. The second phase began after the CVPS shareholder vote and will end before the closing of the acquisition of CVPS. During this time, a formal integration program structure is being launched with full and part-time resources from both companies. The third phase of the integration will begin after the CVPS acquisition

closes and may last for up to seven years. During this phase, all operational activities of the respective companies will be consolidated. Otley pf. at 7-8.

27. GMP will take every precaution to minimize the possibility of service issues for customers during the integration of the two companies. GMP's goal is for service quality to improve. GMP will undertake testing and parallel processing prior to significant cutovers to minimize the possibility of impacts to customers. The integration process will emphasize diligent communications with customers and stakeholders in advance of key system cutover events to create awareness of the activities and how service might be affected. Otley pf. at 13.

28. GMP expects that throughout the integration, it will be reporting service quality metrics to the Department on a quarterly basis and meeting in person more frequently than normal to keep the Department staff up to date with the integration activities and operating performance. Otley pf. at 14.

29. During the most intense periods of the integration, GMP's objective will be to maintain the service quality levels historically delivered by both GMP and Central Vermont. Once the significant aspects of the integration are complete and GMP is operating on a single, best set of infrastructures and procedures, service quality will improve over time. Otley pf. at 14.

30. During the integration, GMP will work to rationalize any differences between the GMP and CVPS service quality programs and will work with the Department to make adjustments to create an appropriate program for GMP that includes the improvement to service quality identified in the DPS MOU. Otley pf. at 14; tr. 3/22/12 at 248 (Otley).

31. GMP will provide improved customer service for Vermonters due to an enhanced ability to respond to storm-related power outages due to the combination of contiguous service territories and closer coordination of responses through one storm center and more flexibility with the combined field staff. By reducing travel as a result of more contiguous territory, GMP can reduce response times and therefore reduce the amount of long hours of strenuous work for crews. This unified operating structure – covering a significant portion of the state's territory – will be important to improving the response to statewide storm emergencies. Powell-Reilly pf. at 11 (Powell); tr. 3/22/12 at 241 (Otley).

32. With respect to consolidating service centers, GMP's goal is for no customer to be further than forty-five minutes travel time from a service center, and ideally, no more than thirty minutes. Tr. 3/22/12 at 234 (Otley).

33. Pursuant to the DPS MOU, GMP will amend its SQRP to improve the reliability standard for customer outage duration by at least 10%. Exh. Petitioners-DPS-1 ¶ 21.

b. Rate Benefits

34. Since the late 1990s, Central Vermont has reduced employee headcount and, more recently, reached a settlement with the Department on staffing levels. As a stand-alone company, the opportunity for Central Vermont to achieve additional labor savings, while maintaining high levels of operational excellence and customer satisfaction, will be challenging. Powell-Reilly pf. at 6 (Reilly).

35. The following GMP and Central Vermont functions will be consolidated as a result of the Merger: finance, legal/regulatory, power planning and supply, communications and external affairs, human resources and training, field operations (including transmission, distribution, substation operations, power production, control center, safety, and environmental) and support operations (engineering, information technology, facilities, security, fleet, metering, customer accounting, customer contact center, customer management, and purchasing). Otley pf. at 6.

36. The Merger will result in cost savings in the areas of executive compensation, regulatory compliance, natural turnover and retirements, operations and information technology, and outside services. Otley pf. at 9-12.

37. The cost savings associated with the creation of a single executive management team are estimated to be approximately \$22,700,000 over the first ten years. Bugbee pf. at 3.

38. Because CVPS will no longer be a separate, New York Stock Exchange publicly traded company, GMP estimates that savings in Securities and Exchange Commission ("SEC") fees and the cost of preparing SEC filings, duplicate audit and Board of Director costs, and regulatory costs will be reduced or eliminated by approximately \$25,700,000 over the first ten years. Otley pf. at 9; Bugbee pf. at 3.

39. Approximately 40% of the collective GMP and Central Vermont workforce will be eligible for retirement in the next five years. Streamlining of operations and better use of technology will enable GMP to sustain high-quality services to its customers while managing the combined workforce through this period. The bubble of retirements creates the opportunity to manage GMP to its next, technology-enabled phase while retaining high-quality operations. Otley pf. at 9-10.

40. For purposes of savings projections, Petitioners used conservative assumptions about employee age and years of service to forecast retirements over the next ten years. Petitioners expect these retirements and natural attrition will achieve their integration goals. GMP's integration efforts will include refilling voluntary or retirement created vacancies in the customer-facing functions such as line workers, substation operators, generation operators, customer service representatives, and similar functions. Because GMP will have the same number of customers and line miles, there will not be a significant change in the number of front-line employees. The savings in that area will be achieved by consolidating service territories and service districts within the service territory and the management and supervisory layers that oversee the front-line work. Otley pf. at 10.

41. Savings due to natural turnover of employees and retirements are estimated to be approximately \$88,200,000 over the first ten years. Bugbee pf. at 3.

42. GMP will review all redundancies that exist between GMP and CVPS operations. Where redundancies exist in operations and these can be eliminated without impact to service quality, they will be eliminated. GMP will focus on non-labor costs savings, such as those that will result from combining service centers. Otley pf. at 10-11.

43. Operations savings, including elimination of redundancy with respect to service centers, customer services, distribution, and other O&M, are estimated to be approximately \$54,300,000 over the first ten years. Bugbee pf. at 3.

44. GMP will consolidate GMP's and Central Vermont's IT infrastructures into a single enterprise platform, which will create savings due to the elimination of certain maintenance contracts and costs, lower hardware costs, lower data center costs, and better licensing pricing. Otley pf. at 11; Powell-Reilly pf. at 11 (Powell).

45. Savings associated with the consolidation of the two companies' IT systems are estimated to be approximately \$17,000,000 over the first ten years. Bugbee pf. at 3.

46. GMP will also seek to bring in-house some work that is typically performed by outside entities (such as contract work in the areas of finance, legal, engineering, IT, metering, and other areas of operations). Otley pf. at 11-12.

47. Savings related to a reduced use of outside services (including legal fees and fees for other consultants) are estimated to be approximately \$18,500,000 over the first ten years. Bugbee pf. at 3.

48. Total Merger-related estimated O&M savings over a ten year period are estimated to be \$226,400,000. The Merger will generate as much as \$500 million dollars of savings over a twenty-year period. Bugbee pf. at 2-4.

49. The savings flowing from the Merger make it essential to Vermont. Tr. 3/28/12 at 33 (Dutton).

c. Financial Benefits

50. Gaz Métro is strong financially, as evidenced by annual cash flows from operations generated by the company over the past five years averaging \$270 million (Canadian) after capital investments for maintenance, which allowed the company to invest over \$200 million (Canadian) in development projects over the same period. Despars pf. at 2.

51. Gaz Métro's total assets were approximately \$3.667 billion (Canadian) for the 2010 fiscal year and its First Mortgage Bonds are rated "A" by Standard & Poor's and DBRS Limited. Despars pf. at 2.

52. Gaz Métro has a strong relationship with its investor, the Caisse, which enables it to turn to the Caisse for capital to support further investments in Gaz Métro's Vermont subsidiaries. Tr. 3/26/12 at 15-16 (Tall), 27-28 (Despars).

53. Given Vermont's proximity to Québec, there are likely to be spill-over effects in Vermont from the support the Caisse has provided in funding Québec businesses, typically at a crucial stage of their development. Tr. 3/26/12 at 11-12 (Tall).

54. The Caisse's investment policy requires that it use best practices, not only in the investments that it makes, but also ensuring that the companies in which it invests make efforts to comply with best environmental practices and sustainability. Tr. 3/26/12 at 14 (Tall).

55. Gaz Métro's financial strength provides ample ability to support the capital needs for the development of NNEEC's subsidiaries. When necessary, Gaz Métro will invest capital sufficient to ensure that the company provides adequate service. Despars pf. at 2-3, 5.

56. Since acquiring Green Mountain Power in 2007, Gaz Métro invested \$46 million in the company. Separate and apart from the Central Vermont acquisition, Gaz Métro has committed to invest \$75 million in Green Mountain Power to allow its management to pursue investments in renewable energy generation, smart grid implementation, and transmission investments through the VELCO Companies. Despars pf. at 4.

57. Over the years, Vermont Gas and Green Mountain Power have paid dividends to NNEEC that served principally to pay interest and return principal on NNEEC's acquisition debt and to maintain the appropriate debt-to-equity ratio required by the Board. Despars pf. at 4; tr. 3/26/12 at 23-24 (Despars).

58. Certain arrangements exist, as well, governing the payment of Green Mountain Power and Vermont Gas income taxes, the returns for which are consolidated with NNEEC and its other subsidiaries, and to cover a portion of NNEEC's administrative costs. As a result, in many years, Green Mountain Power and Vermont Gas have paid dividends that are lower (as a percentage of earnings) than typically paid by other public utilities to their shareholders. In other years, higher dividends were paid to maintain the companies' Board-mandated capital structures. For the most part, NNEEC has retained earnings in Green Mountain Power and Vermont Gas to help finance their capital needs and growth. Despars pf. at 4-5; tr. 3/26/12 at 25-26 (Despars).

59. Gaz Métro views the Merger as another opportunity to make a meaningful, long-term investment in Vermont. Despars pf. at 5.

60. Central Vermont will benefit from the financial strength of Gaz Métro because Gaz Métro will continue to support Central Vermont's important investment initiatives to benefit customers and advance Vermont energy policy, including investments in renewable generation, smart grid technology, transmission investments, and acquisition of neighboring utility assets. Despars pf. at 5; tr. 3/21/12 at 136-37 (Powell).

61. Central Vermont will also benefit from having a strong equity owner and source of liquidity for financing the equity portion of investments and maintaining a strong financial position and strong financial ratios. Despars pf. at 6; Bugbee pf. at 6.

62. Rating agencies identify concentration risk and the associated challenges in managing economic downturns affecting customers as a concern relating to electric utilities. Bugbee pf. at 5.

63. At present, a large portion of GMP's retail load is comprised of one company: IBM. The Merger will result in a reduced level of GMP's customer concentration. Rating agencies are also concerned with the ability of a utility to maintain a strong liquidity position and access to capital. Bugbee pf. at 5.

64. GMP's credit rating improved as a result of its acquisition by Gaz Métro. Bugbee pf. at 5.

d. Management

65. GMP will be lead by a single team of executive leaders. Currently, there are twelve GMP and CVPS officers. GMP plans to have approximately seven officers at the end of the first year and approximately six officers at the end of the third year (due to an expected retirement) and thereafter. Otley pf. at 9.

66. The Department does not anticipate that these management changes will lead to any negative impacts on the operations of GMP. Hopkins pf. at 5.

67. Gaz Métro will use the same management philosophy for GMP that it has employed for the last twenty-seven years in its other Vermont investments: GMP will continue to be a Vermont-managed, stand-alone utility, maintaining an effective, open, and transparent approach to regulators and to Vermont state and local government that will serve GMP's customers well. Despars pf. at 6; Powell-Reilly pf. at 26 (Powell); tr. 3/28/12 at 95-97 (Dutton).

68. NNEEC plans to keep GMP structurally separate from its affiliates and to continue to operate GMP as a stand-alone utility. Tr. 3/26/12 at 40 (Despars); Bugbee pf. at 7.

69. Neither NNEEC, Gaz Métro, nor any of its upstream affiliates will manage GMP. Any other changes in GMP's structure will be directed by its local management and Board of Directors. Despars pf. at 7; exh. GMP-1 at 2.

70. GMP will continue GMP's and Vermont Gas's long histories of having independent directors, with extensive Vermont and industry experience, serve on their boards. Powell-Reilly reb. pf. at 11 (Powell); Despars pf. at 7, 8; exh. GMP-1 at 2.

71. NNEEC also has a proven record of technical, financial, and managerial competency through its ownership of Vermont Gas. Thus, NNEEC and its parent, Gaz Métro, have a well-documented and established track record for operating regulated and unregulated businesses in Vermont. Hopkins pf. at 4-5 (quoting *Joint Petition of Green Mountain Power*, Docket No. 7213, (Vt. Pub. Serv. Bd. Mar. 26, 2007) at 24) ("7213 Order"); Powell-Reilly pf. at 26 (Powell).

72. Since Gaz Métro acquired GMP in 2007, GMP, NNEEC, and Gaz Métro have continued to demonstrate the "ability to operate the electric system in a safe and reliable manner while charging customers just and reasonable rates." Hopkins pf. at 5.

e. Other Benefits

73. Labor savings from the Merger will not be achieved through layoffs (other than executive officers) or mandatory relocations, but instead through natural retirements and turnover. Powell-Reilly pf. at 13, 15 (Powell).

74. As a result of the Merger, GMP and Central Vermont employees will have more opportunities to advance and branch out into new areas of interest. Powell-Reilly pf. at 15 (Powell).

75. The current labor contracts for the two companies will continue in place. Powell-Reilly pf. at 15 (Powell).

76. Pursuant to the Rutland MOU, GMP expects and intends to maintain proportional levels of its employee base headquartered in the Rutland area. The base figure shall be determined by calculating the percentage of Rutland area jobs at GMP on the effective date of the Merger. GMP shall report to Rutland on the levels five, eight, and ten years from the effective date of the Merger. Exh. Rutland-Cross-1 ¶ 1(c); tr. 3/22/12 at 243 (Otley).

77. The Department believes that Petitioners have proposed a reasonable process whereby savings will be acquired without layoffs (besides executives) or forced relocations, and the Rutland MOU further solidifies these commitments. Hopkins pf. at 6.

78. Since GMP and Central Vermont employees already collaborate regularly throughout Vermont where the utilities have adjoining service territories, workforce integration will not cause undue strain on the employees of either company. Hopkins pf. at 6.

79. As memorialized in the Rutland MOU, Petitioners have also made commitments to: site GMP's Headquarters for Operations and Energy Innovation Center in Rutland City or Rutland Town (with the Headquarters for Operations directing activities consistent with, but not limited to, operations currently conducted out of CVPS's Post Road facility, and the Energy Innovation Center serving as a catalyst for innovative programs related to renewable energy, efficiency, customer service options, smart grid technology, and new product offerings); locate a facility in downtown Rutland (based on a collaborative, stakeholder-based engagement process with Rutland community leadership to identify a suitable and appropriate site in downtown Rutland for construction or redevelopment of a new facility, and collaboration with local leaders to develop a plan to repurpose existing CVPS facilities); establish a solar city program in Rutland County resulting in the Rutland area becoming the leading solar generation center in Vermont; create a \$100,000 "Open for Business" fund to be administered by the Downtown Rutland Partnership and a \$100,000 "Green Growth" fund to be administered by the Rutland Economic Development Corporation; and ensure that GMP will continue to play an active and permanent role in the community. Exh. Rutland-Cross-1; Powell-Reilly reb. pf. at 4 (Powell); tr. 3/22/12 at 242 (Otley).

f. Proposed Financial Integrity Measures

80. Under the DPS MOU and IBM MOU, GMP shall implement the following cost allocation and affiliate transaction conditions, which are more stringent than the requirements imposed in the Docket 7213 Order and which shall remain in effect unless and until modified by the Board:

- a. Separate Corporate Entities. GMP shall remain structurally separate and be operated as a stand-alone company. If GMP seeks to change from operating in this manner, GMP and/or NNEEC shall seek prior approval from the Board.
- b. Separate books and records. GMP shall continue to exist as a separate

corporation and shall maintain a complete set of financial books, records and reports separate from NNEEC, Vermont Gas Systems, or Gaz Métro. If GMP seeks to change from operating in this manner, GMP and/or NNEEC shall seek prior approval from the Board.

- c. No commingling of funds. GMP shall maintain separate bank accounts from its affiliates and shall not commingle GMP funds with funds of affiliates.
- d. Transactions with Affiliates.
 - i. Notice. GMP shall provide notice of, and shall file copies upon request, all contracts with affiliates of \$100,000 or more.
 - ii. Arms-Length Transactions. GMP transactions of \$100,000 or more with affiliates shall be effected through arms-length contracts that can be competitively compared and evaluated (see also Cost-based accounting below).
 - iii. Cost-based accounting. GMP shall record transactions with affiliates based on the actual cost of the product or service (i.e., net book value and/or reflecting labor rates with appropriate allocations of overhead and benefit costs) underlying such transaction, except that transactions for which there is a readily-available market price shall be recorded at fair market value or actual cost, whichever is more beneficial for GMP's ratepayers.
 - iv. Documentation. GMP transactions with affiliates shall be documented by invoice or other documentation describing the service or product underlying the transaction and including support for the amount of payment. GMP shall report these affiliate transactions on an annual basis in a report to the Department and the Board.
 - v. Loans to Affiliates. GMP shall not write loans to any affiliated company that is not also rate regulated under a U.S. or Canadian jurisdiction. For any loans between GMP and affiliates with rate regulations by Canadian rate regulators, GMP will seek Board approval before an loans are written.
- e. Distributions and Transfers Among Affiliates.

- i. Board of Director Approval. Distributions or transfers of assets and liabilities in excess of \$100,000, from GMP to NNEEC or other affiliates must be approved in a documented vote by GMP's Board of Directors.
 - ii. Statutory and Corporate Authority. Distributions and transfers of assets and liabilities from GMP to NNEEC or other affiliates shall comply with Vermont law and with GMP's Articles of Incorporation and Bylaws.
 - iii. Notice to Board and DPS. GMP shall provide 30 days' advance notice to the Board and the DPS if (1) any planned transaction or distribution would result in the equity portion of the capital structure of GMP varying by more than three percentage points from the structure approved in GMP's latest rate proceeding; or (2) GMP's unused, short-term borrowing capacity falls below \$25 million; or (3) GMP makes distributions to NNEEC or other affiliates after GMP has been placed on CreditWatch with negative implications if GMP's credit rating is below BBB (S&P) or Baa1 (Moody's). If advance notice is not reasonably possible, GMP will give such notice as soon as practicable.
- f. No Cross-Subsidization. GMP shall conduct its business affairs in a manner that prevents subsidization of affiliates by GMP.
 - g. GMP shall not make any distribution to its parent or to any affiliates that would cause GMP's equity capital to fall below 45 percent of GMP's total capitalization without first obtaining Board approval, except to the extent that the Board imputes a lower equity percentage for ratemaking purposes. The Board may re-examine this minimum common equity percentage as financial conditions change, and may determine that it be adjusted.
 - h. GMP shall provide the Board and the DPS access to all written information, including electronically stored pdfs, provided by Gaz Métro, NNEEC, or NNEEC subsidiaries to bondholders or credit rating analysts which pertains to GMP. Such information includes, but is not limited to, reports provided to, and presentations made to bondholders and credit rating analysts. Nothing in this condition shall be deemed to be a waiver of GMP's right to seek protection of the information.

- i. Unless such a disclosure is determined by a governmental authority to be unlawful, GMP shall notify the Board and DPS of:
 - i. Its intention to transfer an amount that is more than 10 percent of GMP's total stockholder equity to its parent or affiliates (or any combination thereof) over a 12-month period, at least 60 days before such a transfer begins;
 - ii. Its intention to declare a special cash dividend from GMP, at least 30 days before declaring each such dividend;
 - iii. All regular common stock cash dividends from GMP within 10 days after declaring each such dividend; and
 - iv. Its intention to make a loan to an affiliate 30 days before making such a loan.
- j. GMP shall notify the Board and the Department prior to any transfer, sale, lease, encumbrance, or other disposition of GMP's utility property that is not otherwise subject to Board approval and that (1) has a net book value in excess of \$5,000,000 which is included in Vermont rate base, and (2) has costs recovered through rates regulated by the Board.
- k. 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.

Bugbee pf. at 6; exh. Petitioners-DPS-1 ¶ 22; exh. Petitioners Cross-15 ¶ 7; tr. 3/21/12 at 202-03 (Bugbee).

81. GMP will commit to providing its monthly financial reports with the Board and the Department. Bugbee pf. at 6.

82. For the interim period between the closing of the acquisition of Central Vermont and the closing of the merger of Central Vermont and GMP, Central Vermont (as the "Surviving Corporation" under the CVPS-Gaz Métro Merger Agreement) will be subject to the following related conditions under section 5.15(e), (h) of the CVPS-Gaz Métro Merger Agreement: (1) the Surviving Corporation will (i) maintain separate debt instruments and maintain its own corporate and debt credit rating, as well as a rating for long-term debt, and (ii) absent approval by the

Board, not declare or pay any dividends on its capital stock if such dividends would result in a capital structure that would reduce the percentage of equity below the percentage reflected in the capital structure in the Surviving Corporation's most recent forecasted capitalization to the Board; and (2) the Surviving Corporation will (i) not lend to, guarantee, or financially support parent or its affiliates, or any subsidiary or joint venture of the Surviving Corporation, unless approved by the Board; (ii) maintain banking and cash management arrangements separate from other affiliates; (iii) not enter into transactions with affiliates on terms less favorable to the Surviving Corporation than those available from third parties on an arms-length basis, unless approved by the Board; and (iv) maintain books and records separate from other affiliates. Bugbee pf. at 7-8.

83. The cost allocation and affiliate transaction conditions set forth in the DPS MOU will ensure that GMP maintains its financial integrity as a stand-alone entity. Tr. 3/27/12 at 80-81 (Wilson).

g. Competitive Effects/Consistency with 2005 Vermont Electric Plan

84. Since GMP and Central Vermont are authorized by the State to operate at the retail level in exclusive territories, the companies do not currently compete for retail customers. Moreover, with respect to wholesale competition, GMP and Central Vermont are small players in the regional supply market. Powell-Reilly pf. at 17 (Reilly).

85. FERC has reviewed the Merger and concluded there will be no adverse impact on wholesale competition. Exh. WEC-Cross-14.

86. The VELCO transmission system is subject to FERC's open access requirements, thereby ensuring that there is fair and open competition regardless of the ownership and control of Vermont's transmission facilities. Powell-Reilly pf. at 17-18 (Reilly).

87. The absence of intermodal gas versus electric competition in the GMP service territory has not created any concerns. Tr. 3/27/12 at 54 (Doyle); tr. 4/4/12 at 183-85 (Nolan).

88. Ampersand expresses concern that the Merger will result in an increase in monopsony buying power and therefore proposes a requirement that GMP must procure all future generation required to meet its needs through a competitive process. Goulding pf. at 4-8.

89. CVPS and GMP procure power in the New England market, and their needs represent a miniscule portion of the New England load. The Merger does not meaningfully affect generator access to either GMP or other potential purchasers of power. Griffin reb. pf. at 5.

90. Concerning Ampersand's request for a mandatory competitive power procurement process, it presents no facts demonstrating that it would result in lower costs. GMP is subject to a variety of regulatory requirements that its power supply procurement process results in lower costs, including least cost planning, an integrated resource plan, and Board approval to construct in-state generation. Precluding GMP from constructing renewable or other generation or from negotiating bilateral arrangements would not result in lower costs for customers and would not help attain other goals for the power supply portfolio. Griffin reb. pf. at 6; Nolan surr. pf. at 22.

91. The 2005 Vermont Electric Plan, which was in effect at the time of Petitioners' filing, states, in part, that "[c]ontinued consolidation of both large and small companies, or opportunities for shared service capacities, to achieve competitive economies of scale, may be desirable over this 20-year planning period." Hopkins pf. at 7.

92. Although the 2005 Vermont Electric Plan recommends further study of the issue of utility consolidation, the proposed Merger will further State objectives by creating cost-saving opportunities and improved service. The consolidation of GMP and Central Vermont, with appropriate conditions, will be consistent with the 2005 Plan. Hopkins pf. at 7; Powell-Reilly pf. at 27 (Powell).

93. The Department contends that the Merger is not inconsistent with the 2011 Comprehensive Energy Plan, which is silent on the issue of utility consolidation. Tr. 3/29/12 at 100-01 (Hopkins).

C. VELCO and VLITE

(1) Current VELCO Ownership and Governance

94. VELCO is a public service company that manages the Vermont electric transmission system. VT Transco owns the transmission assets. VELCO is the manager of VT Transco. Dutton pf. at 4-5.

95. Equity in VT Transco is offered on a transmission cost ratio basis (Distribution Utility transmission costs paid/Total transmission costs charged to all Vermont Distribution Utilities). Dutton pf. at 5.

96. VELCO is governed by the company's bylaws and a shareholder-elected Board of Directors. Dutton pf. at 6.

97. The bylaws currently in effect provide for a board with seven to twenty-one directors. In practice, VELCO's Board has been comprised of thirteen directors, elected annually by the company's shareholders. Dutton pf. at 6.

98. By informal agreement, four of the directors have been nominated by Central Vermont, two by GMP and one each by BED, VEC, and VPPSA. In addition, VELCO's CEO holds one director seat and there are three independent (no affiliation to the state's retail electric utilities) directors. Dutton pf. at 6.

99. VT Transco is a Vermont limited liability company whose members are Vermont's distribution utilities and VELCO. VT Transco is managed by VELCO and is governed by two key agreements: the Operating Agreement (among its members) and the Management Services Agreement (between VT Transco and its manager VELCO). Dutton pf. at 7.

100. GMP currently owns approximately 29.5% of VELCO, and Central Vermont owns approximately 48.5% of VELCO, for a combined total of approximately 78%. Powell-Reilly pf. at 20-21 (Joint).

101. GMP and Central Vermont own, on a combined basis, approximately 72% of VT Transco ownership units. Powell-Reilly pf. at 21 (Joint).

102. The Board and the Department have extensive general oversight authority over VELCO. FERC exercises extensive authority over electric transmission services and also reviews certain corporate transactions. VELCO is also accountable to ISO-NE, the FERC-appointed operator of the New England region's high-voltage electric system. Dutton pf. at 8-10; Brownell pf. at 11-14.

(2) Petitioners' Proposal Regarding VELCO and VLITE

103. In order to address concerns regarding majority control of the governance of VELCO, the DPS MOU provides that, prior to the closing of the acquisition of CVPS, Central Vermont shall transfer to VLITE no less than 38% of the total of VELCO Class B voting common stock and no less than 31.7% of the total of VELCO Class C non-voting common stock. Exh. Petitioners-DPS-1 ¶ 7.

104. The DPS MOU further provides that Petitioners shall perform all actions necessary to effectuate the election of the initial members of the VLITE Board of Directors as directed by the DPS before the closing of any acquisition approved in this Docket. The DPS shall select initial VLITE directors from representatives of state government agencies, energy policy interest groups, consumer and low income advocates, and public power utilities. Exh. Petitioners-DPS-1 ¶ 8.

105. The DPS MOU further provides that VLITE shall thereafter participate as a shareholder in VELCO for all purposes and shall be entitled to designate members of the VELCO Board pursuant to a VELCO Voting Agreement, in accordance with technical, governance, public interest, and other criteria designed to select representatives well qualified to exercise fiduciary duties as VELCO Board Members to further VELCO's mission. The VLITE Board of Directors may also establish criteria for voting of its VELCO shares. The VLITE Board of Directors shall have the authority to invest its VELCO dividends in any manner consistent with State policy on energy issues, as set forth in the Comprehensive Energy Plan or as otherwise subsequently designated.⁸ Exh. Petitioners-DPS-1 ¶ 9; tr. 4/4/12 at 136-37 (Miller).

106. The DPS MOU obligates Petitioners to make best efforts to obtain a waiver from the other owners of VELCO of any Right of First Refusal provisions regarding the transfer of VELCO stock contained in any VELCO governance documents. Exh. Petitioners-DPS-1 ¶ 10.

107. The DPS MOU provides that immediately after the closing of the CVPS acquisition, GMP, CVPS, and VLITE shall enter into a VELCO Voting Agreement, substantially

⁸ This may include use of the VELCO dividends to assist low-income customers. Exh. Board-10; tr. 4/4/12 at 56 (Powell), 170-71 (Miller).

in the form appended to the DPS MOU, providing that each of them shall, with respect to approval of members of the VELCO Board, vote all of their VELCO shares as follows:

- a. To continue the number of VELCO directors at thirteen;
- b. Vote for the following VELCO directors: four directors as designated by GMP, and three directors as designated by VLITE;
- c. Support the nomination, subject to independence criteria, of two independent directors by those owners of VELCO that are municipal electric distribution utilities or member cooperative electric distribution utilities, including those electric distribution utilities that do not otherwise maintain seats on the VELCO Board. Such director nominees shall be approved by a majority vote of the shareholders of VELCO; and
- d. To continue the other director designations presently in existence as follows: one director designated by VPPSA, one director designated by VEC, one director designated by BED, and a director seat for the president/CEO of VELCO, provided that the president/CEO not be permitted to serve as Chairman of the Board, cannot serve as a voting member of the executive committee (however denominated), the audit committee (however denominated), or the executive management compensation committee (however denominated).

Exh. Petitioners-DPS-1 ¶ 11.

108. The DPS MOU provides that GMP shall agree to support amendments to bylaws and any other governing documents to effectuate formalization of the process for nomination and election of VELCO Directors, including criteria and standards for independent directors and to provide that VELCO shall be managed as a public utility consistent with the public good of the State of Vermont. Additionally, the DPS MOU requires GMP to advocate for all VELCO shareholders to enter into a Voting Agreement substantially similar to the Voting Agreement appended to the DPS MOU. Finally, the DPS MOU memorializes GMP's agreement to advocate for VELCO to allow all Vermont distribution utilities with ownership interests in VT Transco to participate fully as members of the VELCO Operating Committee. Exh. Petitioners-DPS-1 ¶ 12.

109. The DPS MOU provides that, immediately after the closing of the acquisition of CVPS, Petitioners shall take all actions necessary to assure that none of them individually or

collectively can unilaterally remove VELCO as the managing member of VT Transco or to eliminate or amend Section 9.3 of the VT Transco Operating Agreement, including, without limitation, amendment of the VT Transco Operating Agreement in a form acceptable to DPS. Exh. Petitioner-DPS-1 ¶ 13; tr. 4/4/12 at 137-38 (Miller); *see* exh. VELCO-CLD-8.

110. Finally, the DPS MOU memorializes Petitioners' affirmation that they do not intend or desire to obtain a majority position in VELCO governance now or in the future. Petitioners and the DPS will jointly request that the Board include as a condition of approval of the Merger that neither GMP nor CVPS shall increase its ownership share of VELCO in any amount or take any steps that would result in a dilution of the percentage ownership of VELCO by VLITE, without Board approval. Exh. Petitioners-DPS-1 ¶ 14; tr. 4/4/12 at 148 (Miller).

111. The DPS MOU satisfies the Department's concerns regarding VELCO governance and VLITE. Tr. 3/29/12 at 61 (Dworkin).

112. GMP is willing to work with other VELCO owners and the Department to establish, prior to the merger closing, independence standards for VELCO and VLITE directors. Tr. 4/4/12 at 9-11 (Powell).

(3) Other Proposals

113. BED opposes the addition of a public power seat on the VELCO Board for representation of those customers not served by VEC, BED, or VPPSA. BED instead proposes the following changes to VELCO's governance structure: (1) establishment of formal criteria for independent directors similar to what is utilized by ISO-New England; (2) reorganization of VELCO's Board as proposed by Petitioners, but with the addition of two seats for public power at large; and (3) creation of a new non-voting class of VELCO stock, which BED contends would serve the same purpose as Petitioners' proposed transfer of VELCO stock to VLITE. Nolan pf. at 17-19.

114. BED also proposes amending the VT Transco Operating Agreement to ensure that GMP cannot use its majority ownership of VT Transco membership units to replace VELCO as the VT Transco manager. Nolan pf. at 19.

115. SED proposes: reducing the size of the VELCO Board to seven directors, with one director representing each of the following: GMP, VPPSA, BED, SED, VEC, WEC, and

VELCO's CEO. SED also proposes implementing staggered terms and term limits for VELCO Board members. Burt pf. at 19-20.

116. SED views the DPS MOU's provisions regarding VELCO governance as a step in right direction. Tr. 3/28/12 at 88 (Burt).

117. VEC's position regarding VELCO governance is that: (1) GMP should not have majority ownership of VELCO stock or majority representation on the VELCO Board; (2) GMP should not have the ability to remove VELCO as manager VT Transco; (3) the current practice of having the VELCO Board elect the independent VELCO directors should continue; and (4) state ownership of VELCO/VT Transco is not desirable. Hallquist surr. pf. at 3.

118. VPPSA proposes that, as a condition of Merger approval, GMP should be required to: (1) not hold a majority of VELCO Board seats; (2) not be able to vote a majority of VELCO shares; (3) agree to "super majority" provisions for the termination of VELCO as manager of VT Transco or for substantive amendments to VELCO's role as manager of VT Transco; (4) not have any role in the designation of independent/public directors of VELCO; and (5) contribute an additional \$1 million annually into the statewide low income electric assistance effort in Docket No. 7535. Mullett pf. at 7.

119. WEC requests that the Board consider restructuring VELCO as a public or quasi-public transmission entity but does not recommend a specific vehicle for how public ownership of VELCO would be achieved. WEC also contends that VELCO's CEO should not be a voting member of the VELCO Board, and that converting VELCO into a B corporation should be considered. WEC also requests that it and SED receive VELCO Board seats. Patt pf. at 11, 18; Patt surr. pf. at 6.

120. WEC views the DPS MOU's provisions regarding VELCO governance as a significant step forward and an improvement compared to Petitioners' initial proposal. Tr. 3/29/12 at 145 (Patt).

121. VELCO's CEO urges support of the merger and supports the ownership of VELCO shares by VLITE: "And I also believe that this transaction, that is the merger of these two companies, is absolutely essential to Vermont. It is a way to produce huge savings for the state. And I think that the VLITE transaction is an effective way to do that." Tr. 3/28/12 at 33 (Dutton).

122. VELCO contends that an attempt by the State of Vermont to take over VELCO or to convert it to a quasi-public entity would be ill-advised in that it could cause the State to lose one or more of its triple-A ratings and cause an increase to Vermont's cost to raise capital funds for years into the future. VELCO further contends that municipalizing VELCO may constitute a taking. Brownell *surr. pf.* at 3, 6.

123. AIV contends that any shift in VELCO Board representation should go to representatives of other utilities, and does not support use of VELCO dividends to finance low income ratepayer assistance programs. Driscoll *pf.* at 4-5.

124. The Group of 46 Ratepayers asserts that as a condition of Merger approval: (1) VELCO should be required to provide annual public enhanced reporting requirements to summarize how VELCO's activities have promoted the general good of the state in the preceding year; (2) VELCO's articles and bylaws should incorporate the open access transmission requirement set forth in FERC Order No. 888; (3) General Good Directors should comprise 51% of VELCO's Board of Directors, and the State of Vermont should be afforded the option to acquire a 51% ownership interest in VELCO; (4) VELCO Directors should be selected by a seven member Transmissions Nominations Board; (5) VELCO should be converted into a public benefit "B" corporation, which would make it subject to the provisions of 1 V.S.A. § 310 *et seq.*; (6) the State's share of VELCO's dividends should be remitted to the Department, which could then develop a low-income program; and (7) VELCO should be required to notify the Department and the Board of notice of intent to "change control" six months prior to the filing of a petition. Illuzzi *pf.* at 2-5.

(4) Analysis

125. Creation of a new class of VELCO non-voting stock instead of transferring 38% of VELCO voting stock to VLITE would affect VELCO ownership percentages, and would require amendment of the FERC Order approving the Merger. Tr. 3/28/12 at 65-66 (Dutton).

126. The Petitioners' proposals (1) to transfer to VLITE 38% of the total of VELCO Class B voting common stock and 31.7% of the total of VELCO Class C non-voting common stock, (2) to take all actions necessary to assure that none of them individually or collectively can unilaterally remove VELCO as the managing member of VT Transco, and (3) not to increase

their ownership share of VELCO or take any steps that would result in a dilution of the percentage ownership of VELCO by VLITE, without Board approval, effectively prevent GMP from exercising majority control of VELCO or VT Transco. The alternative proposals, such as requiring that VELCO directors be designated by specific entities or be independent, or creation of a class of nonvoting VELCO stock, are not necessary to address the issue of GMP control. Powell-Reilly reb. pf. at 10, 13-14 (Powell).

D. Proposed Synergy Savings Plan

(1) Annual Savings

127. The DPS MOU also provides that GMP shall provide fixed annual guaranteed savings (“Guaranteed Merger Savings”) in years 1-3 and percentage-based shared savings (“Shared Savings”) in years 4-8 to all customers, for the following years in the following amounts:

Year 1: (beginning October 1, 2012): \$2,500,000

Year 2: \$5,000,000

Year 3: \$8,000,000

Years 4-8: 50% of savings

Under the DPS MOU, beginning in Year 9, 100% of all Merger related savings will flow to customers, and O&M Costs included in base rate adjustments shall be based on actual costs, traditional ratemaking principles, and the terms of any alternative regulation plan then in effect. Exh. Petitioners-DPS-1 ¶¶ 15, 28.

128. The October 1, 2012 base rate adjustment (Year 1) will be based on a calendar 2011 test year, adjusted to the base rate year beginning October 1, 2012 based on traditional ratemaking principles as modified by the GMP Alternative Regulation Plan, except that no adjustments due to the Merger will be made to certain operations and maintenance (“Base O&M Costs”), as described in the DPS MOU. The Base O&M Costs will be subject to change in years 2-8 to reflect the change in the Consumer Price Index for All Urban Consumers (“CPI-U”) Northeast Region, any Exogenous Costs, and the impact of the Non-Power Cost Cap, as defined in the GMP Alternative Regulation Plan, and any further changes agreed upon by GMP and the Department and approved by the Board. Exh. Petitioners-DPS-1 ¶ 25.

129. In addition, GMP's base rate cost of service will be credited using the following estimates ("Savings Estimates"):

Year 4: Estimated at \$10,500,000

Year 5: Estimated at \$12,000,000

Year 6: Estimated at \$13,000,000

Year 7: Estimated at \$14,000,000

Year 8: Estimated at \$14,500,000

Exh. Petitioners-DPS-1 ¶ 27.

130. At the end of each of years 4-8, 50% of the difference between Base O&M Costs included in the base adjustment and the actual O&M costs during the same period ("Actual O&M Costs") will be shared with customers in Years 4-8 ("Adjusted Annual Savings") and any variance between the Savings Estimates and the Adjusted Annual Savings will be reflected as a billing adjustment when the next Earnings Sharing Adjustment Mechanism is implemented. With respect to any net Merger-related savings occurring between closing of the acquisition of CVPS and October 1, 2012, the DPS MOU provides that these are included as part of the Year 1 Guaranteed Merger Savings. Exh. Petitioners-DPS-1 ¶¶ 27, 29.

131. Petitioners propose that customers receive 100% of all non-O&M savings associated with the Merger from day one. Exh. Petitioners-Cross-13 at 4.

(2) \$144 Million Savings Guarantee

132. Under the DPS MOU, GMP guarantees savings in rates of at least \$144 million (nominal) beginning October 1, 2012 and ending ten years thereafter. If the total savings reflected in rates during the ten-year period after Merger closing are less than \$144 million, GMP guarantees that it shall provide to customers the difference by means of a bill credit, with the details to be filed with the Board for approval no later than December 31, 2022 and subject to comment by the parties to this case. Exh. Petitioners-DPS-1 ¶ 17; exh. Petitioners-Cross-15 ¶ 4.

133. The \$144 million guarantee is met if the amount of (1) Guaranteed Merger Savings for years 1-3, (2) the Savings Estimates as adjusted by the Adjusted Annual Savings for years 4-8, and (3) the difference between Base O&M Costs and Actual O&M Costs for years 9-10 equal at least \$144 million. Exh. Petitioners-DPS-1 ¶ 17.

(3) Analysis of Annual Shared Savings and Savings Guarantee

a. Shared Savings Calculation

134. Petitioners' method for determining savings by comparing actual and hypothetical expected costs is reasonable and consistent with past utility merger cases. This method is also more accurate than a rate freeze. Hevert reb. pf. at 18, 21; tr. 3/26/12 at 102 (Hevert).

135. Petitioners' savings calculation method also excludes savings that would have occurred in the absence of the Merger for the following reasons. First, historically, O&M costs have risen above the level of inflation for CVPS and GMP on an aggregated basis. Petitioners would expect this historical trend to continue absent the Merger. Because Petitioners propose using the CPI-U Northeast Region, which is a lower escalation rate on the revenue requirement than has historically been the case for CVPS and GMP, as the escalation factor to calculate Merger savings as described below, Petitioners have ensured that savings resulting from replacing retiring employees with employees with fewer years of service and therefore lower salaries will not be counted as Merger savings. Griffin reb. pf. at 3; tr. 3/22/12 at 167-68 (Griffin).

136. Second, GMP will continue to apply the non-power cost cap (based on inflation less productivity) to base rate adjustments that have applied previously under each company's alternative regulation plan. As a result, the post-Merger base rate adjustments, including the O&M component reflecting pre-Merger costs, will continue to be subject to the cap. To the extent that the total non-power supply costs exceed the cap, the revenue requirement for the base rate adjustment will be reduced accordingly. Griffin reb. pf. at 3; tr. 3/22/12 at 171-72 (Griffin).

137. Third, savings and costs related to Smart Grid and Advanced Meter Infrastructure, Kingdom Community Wind, the CVPS acquisition of VMPD, and IT staffing reductions attributable to the settlement approved by the Board in Docket No. 7496 will not be counted as Merger savings. Otley reb. pf. at 3-4; exh. Petitioners-DPS-1 ¶ 25.

138. The DPS MOU provides that no later than July 1, 2012, GMP will file with the Board and the parties in this proceeding a format for reporting Merger-related savings and a procedure for review and verification, which may be commented upon by any party in this proceeding. Exh. Petitioners-DPS-1 ¶ 16; tr. 3/21/12 at 192 (Bugbee).

b. Duration of Shared Savings Plan

139. The duration of the proposed synergy savings plan is consistent with prior utility merger cases. Hevert reb. pf. at 21.

c. Level of Sharing Between GMP and its Customers

140. The guaranteed savings flowing to customers as a result of the consolidation of CVPS and GMP could not otherwise have been obtained from any other acquirer of CVPS. Tr. 3/27/12 at 76-79 (Wilson); *see* tr. 4/3/12 at 222 (Powell).

141. For example, total savings would have amounted to only \$3 million per year if Fortis had acquired CVPS. Tr. 3/21/12 at 167 (Reilly).

142. The Petitioners' initial savings sharing proposal provided that 10% of consolidation savings would flow to customers in the first two years, 20% of savings flowing to customers for years three and four, 33% of the savings in years five and six, and 100% of savings thereafter, which would have amounted to 57% of savings generated by the Merger in the first ten years on a net present value basis. Powell-Reilly pf. at 10-11 (Powell); Bugbee pf. at 4; Griffin reb. pf. at 2.

143. The DPS MOU increases the percentage of Merger-related savings flowing to customers in the first few years from the amounts included in Petitioners' initial proposal, improves the present value of the savings flowing to customers, and aligns customers' and shareholders' interests. Tr. 3/27/12 at 72, 87-88 (Wilson); tr. 4/4/12 at 141 (Miller).

144. Over ten years, 59% of savings will go to customers and 41% go to GMP on a net present value ("NPV") basis. Petitioners' Response No. 1 to PSB's Records Requests Issued April 2, 2012 & Attachment 1 (filed Apr. 6, 2012).

145. The synergy savings plan is balanced to reflect GMP's commitment to deliver value to customers, as well as the appropriate level of incentive for the investment necessary to achieve these savings. The plan, moreover, is generally consistent with plans approved in prior utility mergers. Powell-Reilly reb. pf. at 5; Hevert reb. pf. at 3; tr. 3/26/12 at 79, 81 (Hevert), 112 (Goulding); tr. 3/27/12 at 41 (Gorman).

146. GMP's commitment not to realize cost savings by layoffs (other than a few executive positions) reduces the ability to achieve savings during the initial period when more of

the savings are allocated to GMP. In other utility mergers, employee layoffs, which can be achieved very early in the integration process, have represented a significant component of merger-related cost savings. By committing to no layoffs other than at the executive level, the Petitioners have forfeited the ability to realize significant and relatively certain near-term cost savings relied on in other utility mergers. Hevert reb. pf. at 14.

147. GMP has a strong incentive to realize Merger savings as soon as possible through focused management attention, especially in the early years, where the annual fixed rate credit allocates principally to shareholders the risk involved in realizing Merger savings. The integration of two separate utilities is complex and means that Merger savings are more difficult to achieve in the earlier years of integration, especially in the context of a no-layoff or mandatory relocation policy. Hevert reb. pf. at 9; Powell-Reilly reb. pf. at 6 (Powell); exh. Petitioners-DPS-1 ¶ 15.

148. GMP will not recover all Merger integration and consolidation costs from customers: Gaz Métro is responsible for the acquisition premium, Merger transaction costs, bank fees, payments to outside experts and lawyers, the break-up fee payable to Fortis, and executive change-in-control payments. Petitioners do not seek to recover these costs in rates. Powell-Reilly reb. pf. at 6 (Powell); Hevert reb. pf. at 17, 22-23; Bugbee reb. pf. at 1-2; tr. 3/26/12 at 90 (Hevert).

149. Also, under the savings sharing plan, Merger savings are calculated net of Merger integration and consolidation costs. In any year in which integration-related cost increases exceed integration-related savings, incremental costs will not be included in rates. Therefore, GMP will recover Merger integration and consolidation costs only to the extent it actually achieves cost savings calculated under the savings sharing plan. This component of the savings sharing plan is similar to plans in other approved utility mergers. Hevert reb. pf. at 4, 16-17; Bugbee reb. pf. at 2; exh. Pet.-RJG-4 at 2.

150. A just and reasonable rate of return does not adequately motivate a utility to pursue cost savings through mergers since mergers entail non-routine risks that are not reflected in the risks underlying authorized equity returns. As a result, there is no basis for concluding that merger risks are adequately compensated through the authorized return on equity. Hevert reb. pf. at 3, 22.

151. There is no basis to modify the proposed synergy savings plan on account of Gaz Métro's financing of the acquisition of CVPS through "double leverage." Such an approach is inconsistent with the widely accepted practice of treating a utility subsidiary as its own company and determining the cost of capital by using a subsidiary's own capital structure and cost of debt and equity. This "Stand-Alone" approach recognizes that the return should be based on the relative risk of the investment rather than the source of financing. In addition, using a double leverage adjustment is inconsistent with past precedent. Hevert reb. pf. at 3, 23-29.

152. Moreover, a double leverage adjustment is inappropriate because GMP will have an actual capital structure dedicated to its Vermont business, and Petitioners have indicated they are prepared to accept numerous ring-fencing provisions that will ensure GMP will not be affected by a parent company with slightly more leverage in its capital structure. If customers are protected from risk via ring-fencing, there is no reason why they should get any benefit associated with the incremental debt. Hevert reb. pf. at 29; tr. 3/26/12 at 83-84 (Hevert).

153. In other merger cases in which sharing of savings was permitted, there was no double leverage adjustment even though the acquiring company used debt to finance the acquisition. Tr. 3/26/12 at 82 (Hevert).

E. Windfall Sharing Mechanism

(1) Background

154. The Windfall Sharing Mechanism relates to the Board's finding that that the CVPS Board imprudently locked in early to the Hydro Québec-Vermont Joint Owners power purchase contract ("HQ-VJO Contract") in 1991. Instead of disallowing CVPS from recovering the HQ-VJO Contract's costs in its rates, the Board's Order in Docket Nos. 6460/6120 required that Central Vermont's customers receive 50% of the above-book proceeds of any sale or merger of Central Vermont, or sale of its regulated assets, subject to a cumulative limit of \$16 million (adjusted by inflation). 6460/6120 Order at 6, 57-66.

155. If the Board had not allowed CVPS to recover the HQ-VJO Contract costs in rates, CVPS likely would have gone into bankruptcy, which in turn would have caused customers to realize cost increases well in excess of \$21 million. Tr. 3/21/12 at 136-38 (Powell).

156. By 2006-2007, the HQ-VJO Contract's market value had improved significantly. Tr. 4/3/12 at 40-41 (Bradford); tr. 4/4/12 at 73 (Powell).

157. The Board imposed a nearly identical obligation on GMP in Docket No. 6107 ("6107 Windfall Sharing Mechanism"), which was triggered by Gaz Métro's acquisition of GMP in 2007 in Docket No. 7213. 7213 Order at 34.

158. In Docket No. 7213, the Board concluded that the GMP Efficiency Fund constituted an acceptable means of satisfying the 6107 Windfall Sharing Mechanism. 7213 Order at 37.

(2) The CEED Fund

a. General Description

159. GMP proposes to satisfy the Windfall Sharing Mechanism through the CEED Fund. GMP has committed that Fund investments will be in an amount at least equal to the amount of \$16 million adjusted by inflation from 2001 (\$20.9 million as of December 31, 2011, "Required Investment"). Griffin reb. pf. at 10, 11; exh. Petitioners-DPS-1, Attachment II at 1; Plunkett pf. at 2-3.

160. The Required Investment of approximately \$21 million will be adjusted prospectively by inflation from the time the Fund is approved and continuing on uninvested amounts until the Required Investment has been made. To the extent that GMP fails to make the Required Investment within seven years after the DPS MOU and the CEED Fund are approved by the Board (the "Completion Date"), any shortfall will be provided to CVPS customers on a uniform percentage basis in the form of a bill refund. Exh. Petitioners-DPS-1, Attachment II at 4.

161. The CEED Fund will invest in projects intended to result in positive net benefits for customers within the current CVPS service territory. The cost of Board-approved project investments will be recovered in GMP's rates. Powell-Reilly reb. pf. at 2 (Powell); exh. Petitioners-DPS-1, Attachment II at 1.

162. The CEED Fund is modeled after the GMP Efficiency Fund that the Board approved in Docket No. 7213. See Griffin reb. pf. at 11; Powell-Reilly reb. pf. at 2 (Powell); tr. 3/29/12 at 119 (Hopkins); tr. 3/22/12 at 201 (Griffin).

163. GMP will seek to utilize innovative financing approaches (such as on-bill financing and loan-loss guarantees or reserves) to raise the economic yield on customer funding of efficiency investments. Petitioners, however, are not asking the Board to approve these innovative financing approaches as part of the present proceeding. *See* Plunkett pf. at 4; tr. 3/22/12 at 149 (Griffin).

164. Under the DPS MOU, the Department and Petitioners agree that the CEED Fund (as revised pursuant to the DPS MOU) satisfies the Windfall Sharing Mechanism and should be approved by the Board. Exh. Petitioners-DPS-1 ¶ 18.

b. Qualifying Projects

165. Subject to stakeholder review and Board approval, projects within specified categories (“Qualifying Project Categories”) and meeting certain criteria are appropriate candidates for CEED Fund investments. Projects must benefit customers in CVPS’s service territory and will be selected based on the project’s ability to provide benefits to CVPS customers. Exh. Petitioners-DPS-1, Attachment II at 2.

166. Each project must meet a “but for” test, through a demonstration that, in the absence of the Fund investment, the project either would not be undertaken or would not receive incremental funding in the Fund amount, and will require a statement to that effect by GMP. Investments will be made in rough proportion to customer classes of CVPS customers, with the intention of achieving net benefits in rough proportion as well. Exh. Petitioners-DPS-1, Attachment II at 2.

167. Qualifying Project Categories include: (1) new and existing energy efficiency projects, for which GMP expects to work with Vermont Energy Investment Corporation (“VEIC”) to identify opportunities for projects that benefit CVPS customers, including low income customers and thermal efficiency projects, to the extent they increase the amount of additional savings for CVPS customers or if they improve the ability to deliver proportionate net benefits among customer classes; (2) renewable/clean energy projects that are consistent with the 2011 Comprehensive Energy Plan, and generally would be community-based and smaller than typical utility-scale investments; (3) other demand resources, including distributed generation,

combined heat and power, or other demand response technologies; and (4) new and emerging technologies. Exh. Petitioners-DPS-1, Attachment II at 2-3.

168. Pursuant to the DPS MOU, Petitioners and the DPS have also agreed that weatherization improvements (“Weatherization”) are qualifying projects under the CEED Fund. Exh. Petitioners-DPS-1 ¶ 18.

169. With respect to Weatherization projects, the DPS MOU provides that GMP will partner with community action agencies to invest \$6 million in Vermont’s Weatherization Program before December 1, 2012, and at least an additional \$4 million in Vermont’s Weatherization Program before December 1, 2013. The DPS MOU further provides that GMP will invest at least \$2 million in thermal efficiency improvements before December 1, 2013 for customers who do not qualify for Vermont’s Weatherization Program. Exh. Petitioners-DPS-1 ¶ 19.

c. Required Benefit and Calculation of Net Benefits

170. GMP has committed that the CEED Fund will deliver to CVPS customers net benefits in an amount equal at least equal to 1.2 times the Required Investment (i.e., approximately \$25 million) through investments in the CEED Fund (the “Required Benefit”). Exh. Petitioners-DPS-1, Attachment II at 1.

171. Under the CEED Fund, the Required Benefit amount of approximately \$25 million shall increase over time by using GMP’s weighted average cost of capital to adjust for expected net benefits not yet achieved so the investments deliver the required amount of expected net benefits on a net present value basis. In the event that GMP fails to provide the Required Benefit by the Completion Date, the CEED Fund gives GMP 90 days to file a plan for Board approval specifying how the remaining benefits will be delivered. Exh. Petitioners-DPS-1, Attachment II at 3.

172. Under the DPS MOU, Weatherization and thermal efficiency improvements delivered by December 1, 2013, shall be deemed to have a customer benefit of 1.2 times the amount of their respective investment, and this benefit shall be counted toward the required \$25 million Required Benefit. Exh. Petitioners-DPS-1 ¶ 20.

173. The 1.2 benefit to investment ratio is a conservative estimate of the benefits that will be realized by CVPS customers as a result of the Weatherization investments. Tr. 3/29/12 at 130 (Hopkins); tr. 4/3/12 at 66-67 (Griffin).

174. Under the CEED Fund, benefits may include, among other things, energy and capacity savings, avoided investments in infrastructure, reduced supply risk resulting from fossil fuel and geographic diversity, comparative savings when compared with similar technologies, environmental benefits (emission reductions), economic development benefits, and other customer savings (water, fossil fuel) as applicable. Costs include Fund investments, participating customer investments, and costs associated with project delivery mechanisms, performance monitoring (including DPS audits), benefits measurement and reporting, and any other administrative costs charged by any contracted parties relating to Fund investments as applicable. Aggregate costs will be deducted from aggregate benefits in calculating expected net benefits for approved projects. Exh. Petitioners-DPS-1, Attachment II at 4.

175. The CEED Fund further provides that, to the extent applicable, projected and achieved net benefits for efficiency investments, which for the most part are expected to be administered by VEIC, will be calculated using the measurement methodology that VEIC currently uses in administering Efficiency Vermont (“EVT”) projects. Where the EVT methodology is not directly applicable to efficiency investments, or where investments are made in renewables, demand response programs, or new technologies, GMP will develop appropriate valuation methodologies in coordination with the DPS and any interested stakeholders, and will submit the methodologies to the Board for approval. Exh. Petitioners-DPS-1, Attachment II at 4.

176. Funding an additional \$20.9 million in residential and business energy-efficiency retrofit investment by EVT in CVPS territory over five years can be expected to generate approximately \$40 million in net societal benefits. Plunkett reb. pf. at 2-3.

177. The estimated \$40 million in net societal benefits includes avoided electricity costs, avoided marginal electricity supply costs (including energy generation and generating, distribution, and transmission capacity), energy efficiency savings, resource costs (avoided oil, propane, and natural gas costs), customer operations and maintenance and capital costs, and environmental externalities. Tr. 3/22/12 at 25-26 (Plunkett).

178. The \$20.9 million in residential and business energy-efficiency retrofit investment by EVT in CVPS territory over five years can be expected to generate approximately \$24.2 million in net electric system benefits, assuming a 50/50 commercial to residential split. Tr. 3/22/12 at 28, 30, 34 (Plunkett); exh. Board-1.

179. Electric system benefits are a subset of societal net benefits and include avoided electricity costs, avoided marginal electricity supply costs (including energy generation and generating, distribution, and transmission capacity), and energy efficiency savings, including electric thermal savings. Tr. 3/22/12 at 25-26, 48 (Plunkett).

180. The benefits resulting from the CEED Fund may be allocated as a matter of rate design in a manner to ensure that they stay within the CVPS service territory. Tr. 3/22/12 at 33, 44-46, 50-51 (Plunkett).

181. The \$12 million set aside for Weatherization investments under the DPS MOU will produce some electric benefits. Tr. 3/29/12 at 81 (Hopkins).

d. Stakeholder Process, Administration, and Board Approval

182. The CEED Fund provides that, except for Weatherization programs to be funded through December 1, 2013, projects identified by GMP or proposed by stakeholders will be reviewed in a stakeholder process, consisting of recurring scheduled meetings, open to all interested parties and intended to inform the decision-making regarding allocation of funds. Based on information provided in the stakeholder process, and consistent with the Required Benefit, GMP will select projects to file with the Board for approval. Exh. Petitioners-DPS-1, Attachment II at 2.

183. Petitioners propose prospective reporting to the Board regarding delivery of Weatherization benefits to CVPS customers. Tr. 4/3/12 at 68-70 (Griffin).

184. As with GMP's Efficiency Fund, for the CEED Fund, GMP intends to contract with VEIC and may use other third parties for delivery of approved efficiency project services and for screening and performance monitoring on a basis that is consistent with Board-approved methods for EVT contract administration. Griffin reb. pf. at 12.

185. As with the GMP Efficiency Fund, the Board must approve the methodology for determining the amount of projected net benefits from the CEED Fund, other than the 1.2

benefit/cost ratio associated with Weatherization investments. GMP will provide annual reports documenting the actual net benefits delivered to customers based on the Board-approved methodology. Griffin reb. pf. at 12.

186. Under GMP's proposal, the Board must also review and approve annual investment plans for the CEED Fund other than Weatherization investments. During this review, the Board will have the opportunity to ensure that the requisite benefits flow to former Central Vermont customers. Griffin reb. pf. at 12.

e. Other Proposed Means of Satisfying the Windfall Sharing Mechanism

187. AARP contends that the Windfall Sharing Mechanism requires that approximately \$21 million be returned to CVPS customers in the form of a rebate check or credit on their monthly electric bills. Silkman-Bradford pf. at 19-20.

188. Upfront payment to CVPS customers would fail to leverage the \$21 million with other public and private funds, thus losing the opportunity for CVPS customers to receive additional benefits. Hopkins pf. at 11; tr. 3/29/12 at 123 (Hopkins).

189. A Board requirement to satisfy the Windfall Sharing Mechanism by payment of \$20.9 million in an upfront rate credit to CVPS customers could constitute a material adverse effect under Section 6.1(c) of the CVPS-Gaz Métro Merger Agreement, and thereby terminate the proposed Merger, losing for customers and the State all of the Merger benefits. At a minimum, it would result in protracted litigation and could delay or derail the proposed Merger, effectively eliminating many of the benefits it would otherwise provide. Tr. 3/26/12 at 37, 41 (Despars); tr. 4/4/12 at 75, 76 (Powell); tr. 4/3/12 at 162-63, 173 (Reilly).

190. Payment of the \$21 million upfront could also have an adverse impact on GMP's credit rating. Tr. 3/22/12 at 109-13 (Griffin).

191. Companies bidding on the acquisition of CVPS may have relied upon the Board's Order in Docket No. 7213 that GMP's Efficiency Fund satisfied the 6107 Windfall Sharing Mechanism in valuing CVPS's acquisition price. For example, Mr. Reilly indicated that Fortis discussed an investment approach similar to the GMP Efficiency Fund as a means of satisfying the Windfall Sharing Mechanism. Tr. 4/3/12 at 28-29, 34-35 (Bradford), 152 (Reilly).

f. Analysis

192. From a policy perspective, it is far preferable to make an investment that provides long-lasting benefits to customers than give a one-time rebate to customers that may be used for whatever the customer chooses. Tr. 4/3/12 at 173-74 (Reilly); tr. 4/4/12 at 145-47 (Miller).

193. It is appropriate from a public policy perspective to spend electric ratepayer funds on thermal efficiency programs because thermal programs deliver the greatest benefit and also achieve electric benefits. Tr. 3/29/12 at 121 (Hopkins).

194. The Weatherization investments under the DPS MOU will relieve pressure on low-income heating funding such as the LIHEAP Fund, the Crisis Fund, and on the low income program established pursuant to Docket No. 7535. Tr. 4/4/12 at 146-47 (Miller).

195. Participants in Weatherization programs under the CEED Fund could expect annual reductions in their electric bills of at least \$78 on average. Tr. 3/29/12 at 92 (Hopkins); exh. AARP-Cross-32, Attachment 1.

196. It is fair from an equity perspective for GMP customers to be paying for investments that will benefit CVPS customers because most of the costs under the GMP Efficiency Fund are unamortized at this time and therefore will be paid for in part by CVPS customers under a consolidated cost of service. The costs of the GMP Efficiency Fund and the CEED Fund will be blended following the Merger, so that some of the GMP Efficiency Fund programs will be funded by CVPS customers and some of the CEED Fund programs will be funded by GMP customers. Tr. 3/22/12 at 201-02 (Griffin).

197. The seven-year period timeline to deliver the \$25 million Required Benefit reflects a reasonable balance between the need for customers to receive the Required Benefit as soon as practicable and a reasonable timeframe to accommodate selection of projects that will generate the necessary net benefits and selection of delivery mechanisms to efficiently deliver increased benefits in new areas. Griffin reb. pf. at 11; tr. 3/29/12 at 132 (Hopkins).

198. Given that the unachieved portion of the Required Benefit amount of \$25 million will increase over time using GMP's weighted adjusted cost of capital, GMP has a strong incentive to achieve the Required Benefit as quickly as possible. Tr. 3/29/12 at 132 (Hopkins).

199. The CEED Fund is designed to achieve the four goals identified by the Department. This finding is supported by the findings below.

200. First, GMP will fund investments in rough proportion to rate classes as a means of providing benefits across all customer classes. While some projects may offer benefits that are superior to certain customer classes, GMP will seek to optimize benefits across all customer classes. Thus, GMP will select those opportunities that provide the greatest value to each customer class within a particular investment type. Griffin reb. pf. at 13-14; tr. 3/29/12 at 112-14 (Hopkins).

201. Second, the CEED Fund provides that GMP “will explore innovative methods of financing to be used in conjunction with these investments as a means of leveraging value for customers.” These may include loans or loss reserve funds intended to leverage value for customers. Utilizing these financing mechanisms in conjunction with efficiency or renewable projects has the potential to significantly increase benefits to customers. Griffin reb. pf. at 14.

202. Third, the CEED Fund will provide both economic and environmental benefits to Central Vermont customers due to its flexibility. The CEED Fund provides that projects may include new and existing energy efficiency projects, renewable/clean energy programs, other demand resources, and new and emerging technologies. Griffin reb. pf. at 14.

203. Fourth, the CEED Fund will leverage existing organizations and entities to deliver benefits and services to customers. The CEED Fund document identifies a number of organizations as possible delivery organizations. In addition, the stakeholder process should result in the exploration of additional existing organizations to deliver services. Griffin reb. pf. at 15.

F. Rate Implementation/Alternative Regulation

(1) Rate Implementation

204. The customers’ share of savings will be flowed through to customers as a reduction in rates. Griffin pf. at 3.

205. Pursuant to the DPS MOU, GMP and CVPS residential tariffs shall be integrated on October 1, 2013. Exh. Petitioners-DPS-1 ¶ 30.

206. All other GMP and CVPS tariffs will be integrated after the Board approves a new fully allocated rate design for all customer classes. The DPS MOU provides that GMP shall file a request for a revised rate design no later than October 15, 2014, and GMP and the DPS

shall use all reasonable efforts to assure that the proceeding is completed within nine months.

Exh. Petitioners-DPS-1 ¶¶ 30, 32.

207. Petitioners agree that IBM, AIV, and any other affected customer should have the ability to intervene and participate fully in the rate design proceeding. Griffin reb. pf. at 9; AIV MOU ¶ 4 (filed Mar. 8, 2012).

208. The DPS MOU also provides that cost of service review shall be as provided under the GMP Alternative Regulation Plan for rates to be effective prior to October 1, 2014, and there shall be a traditional cost of service review proceeding (which shall not affect the Base O&M Costs as defined in Paragraph 25 of the DPS MOU) for rates effective on or after October 1, 2014. Exh. Petitioners-DPS-1 ¶ 31.

209. Between the closing of the Merger and the rate integration, GMP's customers will be separated into two categories: customers in GMP's service area will be served on the then current GMP tariff rates and customers in Central Vermont's service area will be served on tariff rates identical to Central Vermont's then-current tariffs. Griffin pf. at 5-6.

210. The GMP and CVPS Alternative Regulation Plans have provided both the Department and the Board ample opportunity annually to review each company's cost of service. The GMP and CVPS Alternative Regulation Plans have produced just and reasonable rates for customers. A suspension of alternative regulation would derail a ratemaking process that provides benefits to customers. Griffin reb. pf. at 8.

211. GMP does not intend to terminate or otherwise affect the agreement set forth in the MOU between Omya, CVPS, and the Department in Docket No. 7660 that Omya shall take service, for its Verpol Plants in Florence, Vermont, on the CVPS Rate 5 tariff for six years from the date of the closing of the acquisition of VMPD by CVPS. Griffin reb. pf. at 10; exh. Petitioners-DPS-1 ¶ 35.

212. Pursuant to the IBM MOU, GMP shall continue to serve IBM on its current C&I Transmission Service Rate and maintain the existence of this rate class, subject to approved rate adjustments and subject to approval by the Board of a new rate design, as contemplated under the DPS MOU. Exh. Petitioners-Cross-15 ¶ 5.

213. The IBM MOU also provides that as a supplement to the tariff and rate integration provisions of the DPS MOU, and as part of the rate design proceeding discussed therein, GMP

will account for the differences in costs associated with serving load at the distribution and transmission level, and will also account for the differences in costs associated with particular voltage levels at which transmission service is provided. Exh. Petitioners-Cross-15 ¶ 6.

(2) Alternative Regulation Plans

214. The integration process also involves integrating the two companies' Alternative Regulation Plans. Griffin pf. at 6.

215. The DPS MOU provides that GMP, CVPS, and the DPS shall file a request for Board approval of certain changes to the CVPS and GMP Alternative Regulation Plans no later than April 15, 2012 ("Filing Date"), and request that the Board's approval be issued no later than July 15, 2012, in order to facilitate the August 1, 2012 filing of the next GMP base rate adjustment applicable to the entire service territory served by GMP post-Merger. Exh. Petitioners-DPS-1 ¶ 23.

216. CVPS and GMP filed requests to revise their respective Alternative Regulation Plans on April 13, 2012. The changes requested to the GMP Alternative Regulation Plan included (1) extension of the term for one year until September 30, 2014, (2) inclusion of customers in the CVPS service territory, and (3) inclusion of any changes necessary as of the Filing Date to conform to the provisions of this MOU, or other changes as appropriate for a plan applicable to both GMP and CVPS that may be agreed upon by GMP and the DPS. Exh. Petitioners-DPS-1 ¶ 23; Joint Pet. (filed Apr. 13, 2012).

217. The changes requested to the CVPS Alternative Regulation Plan included (1) termination of the CVPS Alternative Regulation Plan as of September 30, 2012, except for residual adjustments under the Earnings Sharing Adjustment Mechanism ("ESAM") and power adjustor provided for in the existing CVPS Alternative Regulation Plan, (2) termination of the currently-effective base rate adjustment as of September 30, 2012, and (3) any adjustments necessary to align the timing and duration of the ESAM adjustments under the CVPS Alternative Regulation Plan. Exh. Petitioners-DPS-1 ¶ 23; Joint Pet. (filed Apr. 13, 2012).

218. As required by the IBM MOU, the filing also included a request for Board re-approval of the GMP Virtual Choice Plan in a manner substantially similar to the Virtual Choice Plan approved by the Board in Docket No. 7435, which enabled IBM to procure a particular

amount of load within regulatory requirements but as a separate option. Exh. Petitioners-Cross-15 ¶ 8; tr. 4/3/12 at 125-26 (Griffin).

219. The power adjustors and ESAM adjustments under the GMP and CVPS Alternative Regulation Plans applicable to the period prior to October 1, 2012 will be separately calculated and charged or credited to customers in each legacy service territory. The power adjustors and ESAM adjustments under the GMP Alternative Regulation Plan applicable to the entire service territory served by GMP post-Merger for the period beginning October 1, 2012 will be calculated and charged or credited to all customers. Exh. Petitioners-DPS-1 ¶ 24.

220. The DPS MOU provides that for both GMP and CVPS, GMP will file a base rate adjustment on August 1, 2012, to be effective on October 1, 2012. The percentage change in rates resulting from the base rate adjustment will be applied to all GMP and CVPS tariffs, except that the percentage change applicable to the GMP C&I Transmission Class will be modified to reflect the provisions of the GMP Alternative Regulation Plan applicable to rate adjustments for that rate class. The October 1, 2012 base rate adjustment will be based on a calendar 2011 test year, adjusted to the base rate year beginning October 1, 2012 based on traditional ratemaking principles as modified by the GMP Alternative Regulation Plan, except that no adjustments due to the Merger of CVPS and GMP will be made to Base O&M Costs. Exh. Petitioners-DPS-1 ¶ 25.

221. GMP will provide all parties to the Docket with a copy of the GMP's August 1, 2012 base rate adjustment filing. Tr. 4/3/12 at 121-22 (Griffin); tr. 4/4/12 at 155 (Miller).

222. As part of the August 1, 2012 base rate adjustment, any party in this proceeding may comment on the Base O&M Costs, including a request for a Board investigation under the GMP Alternative Regulation Plan. Exh. Petitioners-DPS-1 ¶ 26.

223. While the combination of GMP and CVPS creates a larger utility, GMP will remain smaller (in terms of customers served) than a number of benchmarked companies in the GMP Alternative Regulation Plan including United Illuminating, CH Energy Group, and Rochester Gas and Electric. The benchmarked group was chosen based upon factors involving similar climates (operating in relatively cold weather), size, and customer density. Comparisons to all utilities, including much larger utilities or those operating in warmer climates, would

therefore be inconsistent with the criteria used to select the benchmarked companies. Griffin reb. pf. at 4.

224. Finally, GMP has adopted a no-layoff approach and therefore will not be able to achieve efficiencies to the same degree as other benchmarked companies. A minimum productivity factor would therefore be inequitable to GMP relative to other benchmarked companies, given this commitment and the significance of labor and benefit costs as a proportion of benchmarked O&M spending. Griffin reb. pf. at 5.

225. Ampersand contends that GMP's SQRP should carry increased penalties. Goulding pf. at 14.

226. Many of the above findings also apply to Ampersand's claim that GMP's SQRP carry increased penalties. The \$144 million guaranteed benefit has not been accounted for in Ampersand's calculus; the companies already have penalties in place regarding service quality and customer surveys, and other metrics do not suggest that there is a problem that needs to be addressed that requires more punishing service metric penalties than exist currently. Griffin reb. pf. at 5.

227. Ampersand also proposes a reduction to GMP's return on equity due to its larger size and based on certain commitments made by witnesses Powell and Reilly. Goulding pf. at 6-7.

228. Ampersand has introduced no evidence to support the position that GMP's enhanced access to capital warrants a reduction in the return required by equity investors. Nor has Ampersand provided any evidence that investors necessarily would require a lower return for GMP relative to GMP and CVPS on a stand-alone basis. Ampersand's position appears to be predicated on the theory that because GMP would be larger than CVPS and GMP on a stand-alone basis, its Cost of Equity necessarily would be lower. Goulding pf. at 6-7; Hevert reb. pf. at 31-32.

229. Post-Merger, GMP's electric utility operations will be significantly smaller than the median of the proxy group companies' electric utility operations in terms of the number of customers, total sales volume, and annual revenues. Hevert reb. pf. at 33-34; exh. Pet.-RBH-4.

230. Even considering the incrementally larger size of GMP relative to its stand-alone components, investors still would require a substantial size premium relative to peer companies.

As such, Ampersand's suggestion that the post-Merger authorized Return on Equity should be reduced as a result of GMP's larger size relative to the stand-alone entities is unsupported. Hevert reb. pf. at 36.

G. Other

(1) Irasburg-East Fairfax Transmission Facilities

231. CVPS owns certain transmission facilities ("Irasburg-East Fairfax Transmission Facilities") that run from Irasburg to East Fairfax—through VEC's service territory. VEC contends that the Irasburg-East Fairfax Transmission Facilities have had a poor reliability record, due to lack of automated switching capabilities and remoteness of nearest service center. These alleged deficiencies have resulted in lengthy outages for VEC customers. Wright pf. at 2-3.

232. Pursuant to the VEC MOU, Petitioners and VEC have agreed to commence negotiations immediately with the goal of agreeing to a mutually acceptable model for the ownership and operation of the Irasburg-East Fairfax Transmission Facilities by July 15, 2012, which VEC believes will address the reliability issues. Exh. VEC-JMW-1; Otley reb. pf. at 1.

233. VEC has a history of successful collaboration with GMP to address similar operational issues. Wright pf. at 5.

(2) VPPSA Agreements

234. Petitioners have also reached agreement with VPPSA member Hyde Park, contingent on approval of the Merger, to negotiate in good faith to request Board approval to terminate a 3-Phase Service Agreement between Hyde Park and CVPS that was put in place when the service territories were established. Mullett pf. at 5; Otley reb. pf. at 2.

235. A number of VPPSA members have agreements, understandings, and procedures with GMP and CVPS. VPPSA has sought and obtained assurance from Petitioners that its members' currently existing agreements, understandings, and procedures with GMP and CVPS will remain in place and that none will be changed or terminated without notice and an opportunity to negotiate in good faith. Mullett pf. at 5-6; Otley reb. pf. at 2.

(3) Highgate Agreement

236. Under the Highgate Agreement, each owner has a representative on a management committee with a percentage of votes equivalent to its ownership share in the project. The existing agreement requires that decisions of the management committee be made by at least two owners representing a majority of ownership shares in the project. Exh. Board-9; Nolan pf. at 3.

237. BED contends that the Highgate Agreement should be amended to increase the level of operational control by smaller utilities following the Merger. Nolan pf. at 5.

238. VPPSA and WEC also support BED's requested amendment to the Highgate Agreement. Mullett pf. at 6; Patt surr. pf. at 5.

239. Petitioners have stated that they will work with the Highgate Joint Owners to amend the Highgate Joint Agreement as requested by BED. Otley reb. pf. at 2.

(4) WEC Sub-transmission Tariffs

240. Seven out of eight WEC substations are served by transmission lines owned by GMP. WEC also has a metering tap from a three-phase line owned by GMP. Patt pf. at 19.

241. In their FERC filing, Petitioners have proposed to merge their sub-transmission tariffs with CVPS. WEC contends that it will incur a 70% rate increase as a result of the merger of the sub-transmission tariffs. WEC requests that the Board condition the Merger on measures to hold WEC harmless from the merged sub-transmission tariffs. Patt pf. at 20-21.

242. Over the past three years, GMP has made significant investments in its transmission system to improve reliability including substation re-builds at its Essex Gorge and Lime Kiln facilities as well as substation technological upgrades implemented as part of the eEnergy VT Smart Grid grant from the Department of Energy. As a result of its recent, increased investment in its transmission system, it would be appropriate to adjust GMP's sub-transmission rates to recover these increased costs. Such a rate increase would occur regardless of the Merger. Otley reb. pf. at 7.

243. Merger-related savings will not be passed on to wholesale customers in the same manner as they will be passed on to retail customers. The wholesale component of the transmission expenses will be passed on to the open access transmission tariff ("OATT")

customers as the expenses either increase or decrease on a yearly basis after GMP has merged its OATT rates in a follow-on FERC proceeding under Section 205 of Federal Power Act, in which WEC will have the opportunity to participate. Exh. WEC-Cross-45; tr. 3/21/12 at 171-72 (Reilly).

244. WEC's request that rate mitigation be accomplished by allowing customers that have been served on GMP's transmission rate prior to the Merger, such as WEC, to pay rates that GMP would have charged as a stand-alone company absent the Merger, will be addressed by FERC, which has exclusive jurisdiction over sub-transmission rates. It does not make sense to have two possibly conflicting regulatory conditions concerning this issue. Otley reb. pf. at 7-8.

(5) Status of Other Necessary Approvals

245. To date, the Merger has been approved by CVPS shareholders, the Maine Public Service Commission, the Federal Communications Commission, the Committee on Foreign Investment in the United States, and FERC, and waivers have been granted by the New York Public Service Commission and the Federal Trade Commission ("Hart-Scott-Rodino"). Approvals are pending before the Nuclear Regulatory Commission and the New Hampshire Public Utilities Commission. Powell-Reilly reb. pf. at 5 (Powell); tr. 3/21/12 at 161-62 (Reilly).

(6) Importance of June 30, 2012 Closing

246. It is important to customers that the acquisition of CVPS closes by June 30, 2012. First, GMP cannot start realizing efficiency savings until it starts the actual integration process following the Merger. Powell-Reilly reb. pf. at 11 (Powell).

247. Second, the Petitioners have agreed with the Department's proposal to implement the savings sharing plan and consolidated rate requirements at the start of the next fiscal year on October 1, 2012, which will be helpful in customer communications and sharing of Merger savings. There are many steps that are required immediately after the acquisition closing to allow for the first rate year of GMP to begin October 1, 2012. This will aid the smooth combination of GMP's and CVPS's Alternative Regulation Plans, an orderly rate integration process for future fiscal years, and the implementation of a long-term financing plan for GMP. Petitioners contend that if they are out-of-sync with the start of a new fiscal year on October 1,

the complexity of the requisite regulatory filings will increase. Powell-Reilly reb. pf. at 11-12 (Powell).

248. Third, closing the transaction by June 30, 2012 will help ensure that CVPS does not have to pay a common stock dividend in August. At present, CVPS expects to conditionally declare the dividend in July, set a record date of August 1, 2012, and payment date of August 15, 2012. If the transaction closes by June 30, 2012, the amount of the August 15 dividend will not be paid to existing CVPS shareholders and will instead be an asset of the acquired company (i.e., CVPS), available to offset borrowings or otherwise benefit customers. Powell-Reilly reb. pf. at 12 (Reilly).

249. Fourth, if the acquisition of CVPS closes by June 30, 2012, CVPS will save costs of preparing a second quarter Form 10-Q filing with the SEC. The costs of preparing these filings are significant. Powell-Reilly reb. pf. at 12 (Reilly).

250. Fifth, Petitioners contend that the sooner they are able to close, the more they can shorten the time of uncertainty for employees, and minimize the risk that valuable employees might seek other employment. Powell-Reilly reb. pf. at 12 (Reilly).

251. Under the DPS MOU, Petitioners and the Department have agreed that the Board should issue an order approving the amended Petition, as modified by the DPS MOU, in time to permit closing of the acquisition of CVPS by June 30, 2012. Exh. Petitioners-DPS-1 ¶ 33.

V. DISCUSSION

Vermont law requires that, prior to completing the Merger transactions proposed in this case, Petitioners obtain approval from the Board under 30 V.S.A. §§ 104,⁹ 107, 109, and 311. Specifically, Section 107(a) states (in relevant part) that:

No company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the public service board, or in any company which, directly or indirectly has a controlling interest in such a company, without the approval of the public service board.

⁹ Section 104 approval is needed only in connection with the proposed amendments to the CVPS Articles of Incorporation.

Similarly, Section 109 specifies (in relevant part) that:

A corporation or a foreign corporation subject to the jurisdiction of the public service board, shall not ... merge nor consolidate pursuant to the provisions of sections 301-307 of this title, nor after any such ... merger shall any subsequent like action be taken, except after opportunity for hearing by the public service board and a finding by such board that the same will promote the general good of the state. ¹⁰

Section 311 contains a different standard, requiring that:

A consolidation or merger under the provisions of this chapter shall not become effective without the approval of the public service board after due notice and opportunity for hearing, and the finding on its part that such consolidation or merger will not result in obstructing or preventing competition in the purchase or sale of any product, service or commodity, in the sale, purchase or manufacture of which such corporations are engaged.

The Board has observed that its analysis is directed toward meeting the two fundamental requirements under these statutes: that the transactions will promote the general good and will not obstruct or prevent competition.¹¹ In so doing, the Board has typically evaluated five concerns: whether the surviving company (1) is technically competent, (2) financially sound, (3) will act as a fair partner in business transactions with the citizens of Vermont, and whether the transaction (4) creates efficiencies that will benefit customers, and (5) will not impair or obstruct competition in the energy markets.¹²

The Board has also considered additional factors where one utility proposes to sell all of its assets to another utility that will concomitantly assume the franchise and service obligations in the service territory of the selling utility.¹³ These include: (1) the appropriateness of the proposed acquirer in the context of the proposed sale, particularly with reference to the

¹⁰ All sections of Chapter 7 other than Section 311, Sections 301-307, have been repealed.

¹¹ 7213 Order at 9.

¹² *Id.* at 9-10.

¹³ *Joint Petition of Vermont Marble Power Division of Omya Inc.*, Docket No. 7660 (Vt. Pub. Serv. Bd. June 10, 2011) at 37; *Joint Petition of Citizens Comm'cs Co.*, Docket Nos. 6850 and 6853 (Vt. Pub. Serv. Bd. Mar. 1, 2004, *as reissued* Mar. 29, 2004) at 13, 14, 16, 17, 22, 23, & 27.

compatibility of the two service territories, (2) the soundness of the proposed price and terms of purchase, (3) the effect on the rates of customers of each of the two utilities, (4) service effects and the opportunities for improvements in the reliability and quality of services in the seller's service territory, (5) the effect on employees, and (6) whether the acquisition is consistent with the Vermont Electric Plan.¹⁴

A. Technical Competence

A determination of technical competence requires an assessment of the surviving company's ability to operate the electric system in a safe and reliable manner while charging customers just and reasonable rates.¹⁵ The record amply shows that GMP has the technical competence to operate post-Merger. First, GMP will have a strong management team and workforce, and will continue to operate as a stand-alone utility, maintaining an effective, open, and transparent approach.¹⁶ Second, NNEEC and its parent, Gaz Métro, have a well-documented and established track record for operating regulated businesses in Vermont.¹⁷ Third, the two companies are highly compatible geographically, demographically, and technically.¹⁸ Accordingly, GMP will operate in a safe and reliable manner while charging customers just and reasonable rates.

B. Fairness as a Partner and Financial Soundness

The record supports the conclusion that GMP will be a fair partner in business transactions. A significant component of this consideration is whether the Merger will result in any change in the management structure or operations of the company.¹⁹ The evidence demonstrates that although the Merger will occasion some changes in management, the changes will not lead to any negative impacts on the operations of GMP, due to both GMP's and CVPS's

14 *Id.*

15 7213 Order at 23.

16 Tr. 3/26/12 at 40 (Despars); Bugbee pf. at 7; Despars pf. at 6.

17 Powell-Reilly pf. at 26 (Powell); Hopkins pf. at 5.

18 Otley pf. at 4.

19 7213 Order at 27.

established track records in Vermont.²⁰ Furthermore, as discussed above, GMP will remain a stand-alone company subject to the Board's jurisdiction, and the current labor contracts for the two companies will continue in place.²¹

GMP will maintain and build upon CVPS's prominent role in the Rutland area. This includes commitments to: maintain proportional levels of GMP's employee base headquartered in the Rutland area; site GMP's Headquarters for Operations and Energy Innovation Center in Rutland City or Rutland Town; locate a facility in downtown Rutland; establish a solar city program in Rutland County resulting in the Rutland area becoming the leading solar generation center in Vermont; create a \$100,000 "Open for Business" fund to be administered by the Downtown Rutland Partnership and a \$100,000 "Green Growth" fund to be administered by the Rutland Economic Development Corporation; and ensure that GMP will continue to play an active and permanent role in the community.²²

GMP has also committed to work collaboratively with other distribution utilities. This includes commitments to: work with the Highgate Joint Owners to amend the Highgate Agreement to increase the level of operational control by smaller utilities following the Merger; negotiate with VEC to develop a mutually acceptable model for the ownership and operation of the Irasburg-East Fairfax Transmission Facilities; negotiate in good faith to request Board approval to terminate a 3-Phase Service Agreement between Hyde Park and CVPS; and maintain currently existing agreements, understandings, and procedures with VPPSA members.²³

Finally, the DPS MOU requires GMP to take certain actions to address concerns regarding majority control of the governance of VELCO. These include commitments to: transfer no less than 38% of the total of VELCO Class B voting common stock and no less than 31.7% of the total of VELCO Class C non-voting common stock to VLITE; use best efforts to obtain a waiver from other owners of VELCO of any Right of First Refusal provisions regarding the transfer of VELCO stock contained in any VELCO governance documents; take all actions

²⁰ Powell-Reilly pf. at 26 (Powell); Hopkins pf. at 5.

²¹ Despars pf. at 6; Powell-Reilly pf. at 15, 26 (Powell).

²² Exh. Rutland-Cross-1; Powell-Reilly reb. pf. at 4 (Powell); tr. 3/22/12 at 242 (Otley).

²³ Otley reb. pf. at 1-2.

necessary to assure that none of Petitioners individually or collectively can unilaterally remove VELCO as the managing member of VT Transco or eliminate or amend Section 9.3 of the VT Transco Operating Agreement; reaffirm that Petitioners do not intend or desire to obtain a majority position in VELCO now or in the future; and jointly request that the Board include as a condition of approval of the Merger that neither GMP nor CVPS shall increase its ownership share of VELCO in any amount or take steps that would result in a dilution of the percentage ownership of VELCO by VLITE without Board approval.²⁴

The record also demonstrates that GMP will be financially sound. First, the Gaz Métro acquisition will permit Central Vermont's customers to have the benefits of greater access to capital and stronger liquidity for financing the equity portion of investments and maintaining a strong financial position and strong financial ratios.²⁵ Second, at present, a large portion of GMP's retail load is comprised of one company: IBM. The Merger will result in a reduced level of GMP's customer concentration.²⁶ Third, the DPS and IBM MOUs require GMP to implement several cost allocation and affiliate transaction conditions, which are more stringent than the requirements imposed in the 7213 Order.²⁷ These measures will ensure that GMP maintains its financial integrity as a stand-alone entity.

For these reasons, GMP will be a fair business partner and financially sound.

C. Creation of Efficiencies and Effect on Competition

The Board also examines whether the Merger will lead to efficiencies that benefit customers, and whether it will obstruct or prevent competition.²⁸ As set forth in the findings, the Merger will create significant efficiencies in the provision of service that could not otherwise be achieved, and that will benefit customers for years to come.²⁹ These include: improved

24 Exh. Petitioners-DPS-1.

25 Despars pf. at 6; Bugbee pf. at 6.

26 Bugbee pf. at 5.

27 Exh. Petitioners-DPS-1.

28 7213 Order at 29, 30.

29 Tr. 3/27/12 at 76-79 (Wilson); *see* tr. 4/3/12 at 222 (Powell).

customer service and reliability from merging adjoining service territories; \$144 million in guaranteed customer savings over the first ten years alone, with as much as \$500 million in savings expected after twenty years; and 100% of all non-O&M savings, including those from capital expenditures, power supply, and other aspects of GMP's operations, flowing directly to customers from day one of the Merger.³⁰

The evidence also demonstrates that the Merger will not impair or obstruct competition. First, Central Vermont and GMP do not compete for customers due to their exclusive retail franchises.³¹ Second, FERC has reviewed the Merger and concluded it will have no adverse impact on wholesale competition.³² Third, the absence of intermodal gas versus electric competition in the GMP service territory has not created any concerns, and there is no evidence that the Merger will cause any.³³ Fourth, CVPS and GMP procure power in the New England market, and their needs represent a miniscule portion of the New England load.³⁴ Therefore, the Merger will not meaningfully affect generator access to either GMP or other potential purchasers of power.

Accordingly, the Merger will lead to efficiencies that benefit customers, and will not obstruct or prevent competition.

D. Suitability of Buyer and Compatibility of Service Territories

The record shows that NNEEC is not only an appropriate purchaser of CVPS but also the most advantageous purchaser of CVPS, given (1) its plans to merge CVPS and GMP, and the unique efficiencies that this will create and (2) its proven track record in Vermont.³⁵ The two contiguous service territories are also unquestionably compatible. Due to the adjacent service territories and similar operating characteristics of the two companies, GMP and Central Vermont have worked together in the past and are familiar with each other's territories, safety procedures,

³⁰ Bugbee pf. at 2-4; exh. Petitioners-DPS-1 ¶ 17; exh. Petitioners-Cross-13 at 4.

³¹ Powell-Reilly pf. at 17 (Reilly).

³² Exh. WEC-Cross-14.

³³ Tr. 3/27/12 at 54 (Doyle); tr. 4/4/12 at 183-85 (Nolan).

³⁴ Griffin reb. pf. at 5.

³⁵ Tr. 3/27/12 at 76-79 (Wilson); see tr. 4/3/12 at 222 (Powell).

and operating methods.³⁶ The Merger will create opportunities to achieve increased efficiencies due to this compatibility.

E. Value to Buyers and Customers; Impact on Customers of Selling Utility; Soundness of Price and Terms of Purchase

The proposed Merger will provide significant benefits to GMP and CVPS customers through substantial, long-term savings, provided by a stronger electricity supplier. The savings sharing plan set forth in the DPS MOU provides a fair mechanism to allocate the benefits and assure that rates will be lower than they would have been without the Merger.³⁷ As discussed above, the proposal provides other significant benefits, including the preservation of Vermont control over VELCO, increased benefits for the Rutland region, and a minimum of \$25 million in benefits under the CEED Fund for CVPS customers.³⁸ Accordingly, the terms of the proposed purchase of CVPS are sound, and the Merger will bring value and positively impact CVPS's customers.

F. Effect on Employees

The record demonstrates that the Merger will result in significant employee benefits. First, labor savings from the Merger will not be achieved through layoffs (except for some executive officers), or mandatory relocations, but instead through natural retirements and turnover.³⁹ Second, as a result of the Merger, GMP and Central Vermont employees will have the opportunity to advance and branch out into new areas of interest.⁴⁰ Third, pursuant to the Rutland MOU, GMP will maintain proportional levels of its employee base headquartered in the Rutland area.⁴¹

36 Otley pf. at 4.

37 Exh. Petitioners-DPS-1.

38 Exh. Petitioners-DPS-1; exh. Rutland-Cross-1.

39 Powell-Reilly pf. at 13, 15 (Powell).

40 Powell-Reilly pf. at 15 (Powell).

41 Exh. Rutland-Cross-1.

G. Consistency with 2005 Vermont Electric Plan

Although a specific determination by the Department under 30 V.S.A. § 202(f) as to whether the Merger is consistent with the 2005 Vermont Electric Plan does not appear required in this proceeding, it is appropriate to consider the Merger in the context of such plan.⁴² The 2005 Vermont Electric Plan, which was in effect at the time of Petitioners' filing, states, in part, that "[c]ontinued consolidation of both large and small companies, or opportunities for shared service capacities, to achieve competitive economies of scale, may be desirable over this 20-year planning period."⁴³ Moreover, the Merger is not inconsistent with the 2011 Comprehensive Energy Plan, which is silent on the issue of consolidation.⁴⁴ The Merger will thus further state objectives by creating cost-saving opportunities and improved service.

[The Board may wish to incorporate argument and analysis from the Petitioners' brief, separately filed, in its discussion.]

VI. CONCLUSION

Based on the foregoing, the Board concludes that approval of the proposed transactions and of the indirect acquisition of Central Vermont and the companies it now controls by NNEEC (and by companies that directly or indirectly have a controlling interest in NNEEC including Gaz Métro), subject to the conditions set out in this Order, will promote the general good of the state pursuant to 30 V.S.A. §§ 104, 107, and 109. The Board further concludes, pursuant to 30 V.S.A. § 311, that the Merger will not obstruct, prevent, or impair competition in the purchase or sale of any product, service, or commodity of which such companies are engaged. The Board reaches this conclusion in reliance upon the assurance of the Petitioners that GMP will be stronger after

⁴² *Joint Petition of Vermont Marble Power Division of Omya Inc.*, Docket No. 7660 (Vt. Pub. Serv. Bd. June 10, 2011) at 47.

⁴³ 2005 Vermont Electric Plan at 10-18.

⁴⁴ Tr. 3/29/12 at 100-01 (Hopkins).

the Merger and will be able to provide more effective and efficient service to customers than GMP and Central Vermont could separately provide.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. The acquisition of Central Vermont Public Service Corporation (“CVPS”) by Northern New England Energy Corporation (“NNEEC”), a subsidiary of Gaz Métro Limited Partnership, the subsequent merger of CVPS into and with Green Mountain Power Corporation (“GMP”), the amendment to CVPS’s Articles of Association, the acquisition by Vermont Low Income Trust for Electricity, Inc. (“VLITE”) of a controlling interest in Vermont Electric Power Company, Inc. (“VELCO”), the indirect acquisition of controlling interests in Vermont Yankee Nuclear Power Corporation, VELCO, Vermont Transco LLC and Vermont Electric Transmission Company by NNEEC (and parent companies) and VLITE, all as described in the Joint Petition, prefiled testimony, and exhibits, are approved pursuant to 30 V.S.A. §§ 104, 107, 109, and 311, subject to the conditions set out in this Order.

2. A Certificate of Consent for the transfer shall be issued pursuant to 30 V.S.A. § 109.

VELCO Ownership and Governance, VLITE

3. The transfer by CVPS to VLITE of 38% of the total of VELCO Class B voting common stock and no less than 31.7% of the total of VELCO Class C non-voting common stock is approved, and CVPS shall transfer such stock as a condition of this approval. [Exh.

Petitioners-DPS-1 ¶7]⁴⁵

4. Immediately after the closing of the acquisition of CVPS, Petitioners shall take all actions necessary to assure that none of them individually or collectively can unilaterally remove VELCO as the managing member of Vermont Transco LLC or to eliminate or amend Section 9.3 of the Vermont Transco LLC Operating Agreement, including, without limitation amendment of the Vermont Transco LLC Operating Agreement in a form acceptable to DPS. [Exh.

Petitioners-DPS-1 ¶ 13]

⁴⁵ Bracketed references at the end of each proposed condition are to its evidentiary source.

5. Neither GMP nor CVPS shall increase its ownership share of VELCO in any amount or take any steps that would result in a dilution of the percentage ownership of VELCO by VLITE, without Board approval. [Exh. Petitioners-DPS-1 ¶ 14]

Guaranteed Shared Savings

6. GMP shall provide fixed annual guaranteed savings (“Guaranteed Merger Savings”) in years 1-3 (“Guaranteed Merger Savings”) and percentage-based shared savings (“Shared Savings”) in years 4-8 to all customers, for the following years in the following amounts:

Year 1: (beginning October 1, 2012): \$2,500,000

Year 2: \$5,000,000

Year 3: \$8,000,000

Years 4-8: 50% of savings

Years 9 and 10: 100% of savings

[Exh. Petitioners-DPS-1 ¶15]

7. GMP shall guarantee total merger savings to customers in the nominal amount of no less than \$144 million over the course of the first ten (10) years post-closing. [Exh. Petitioners-DPS-1 ¶15; exh. Rutland-Cross-1 ¶1(a)]

8. No later than July 1, 2012, GMP shall file with the Board for approval, and with the parties, a format for reporting merger-related savings and a procedure for review and verification, which may be commented upon by any party in this proceeding. [Exh. Petitioners-DPS-1 ¶ 16; tr. 4/3/12 at 136 (Griffin)]

9. No later than December 31, 2022, GMP shall file a plan to provide a bill credit to customers, including a proposed methodology and timing for implementation, to be approved by the Board, in the event total merger savings reflected in GMP rates during the ten-year period after merger closing are less than \$144 million. [Exh. Petitioners-DPS-1 ¶ 17; exh. Petitioners-Cross-15 ¶ 4]

Windfall Sharing Mechanism

10. The proposed Community Energy & Efficiency Development Fund (“CEED Fund”) as set forth in the Memorandum of Understanding (“DPS MOU”) dated March 26, 2012 between the Petitioners and the Department of Public Service (“DPS” or “Department”) is approved. [Exh. Petitioners-DPS-1 ¶18]

11. GMP shall partner with community action agencies to invest \$6 million in Vermont’s Weatherization Program before December 1, 2012, and at least an additional \$4 million in Vermont’s Weatherization Program before December 1, 2013. GMP shall also invest at least \$2 million in thermal efficiency improvements before December 1, 2013 for customers who do not qualify for Vermont’s Weatherization Program. The Weatherization and thermal efficiency improvements delivered by December 1, 2013, shall be deemed to have a customer benefit of 1.2 times the amount of the investment, and this benefit shall be counted toward the “Required Benefit” as defined in the CEED Fund. [Exh. Petitioners-DPS-1 ¶¶ 19-20]

12. Petitioners shall report to the Board regarding delivery of Weatherization benefits to CVPS customers on a prospective basis. Tr. 4/3/12 at 68 (Griffin).

Reliability Improvement

13. On or before October 1, 2012, GMP shall request Board approval of a revision to its Service Quality and Reliability Plan (“SQRP”) to improve the reliability standard for customer outage duration by at least 10%. [Exh. Petitioners-DPS-1 ¶ 21]

Financial Integrity Measures

14. GMP shall comply with the financial integrity measures set forth in the findings of fact. [Exh. Petitioners-DPS-1 ¶ 22; exh. Petitioners-Cross-15 ¶7]

Alternative Regulation Plan and Merger Savings Calculation

15. GMP shall file a base rate adjustment on August 1, 2012, to be effective on October 1, 2012, based on a consolidated GMP/CVPS cost of service, consisting of a uniform percentage change in rates and tariffs, except for the GMP C&I Transmission Class tariff, and

otherwise complying with the findings. The October 1, 2012 base rate adjustment will not include merger-related adjustments to the operations and maintenance costs described in the findings (“Base O&M Costs”). Such Base O&M Costs shall be subject to change in each future base rate adjustment in which merger savings are shared with customers only to reflect the change in the Consumer Price Index for All Urban Consumers (CPI-U) Northeast Region, any Exogenous Costs, the impact of the Non-Power Cost Cap as defined in the GMP Alternative Regulation Plan, and any further changes agreed upon by GMP and the Department and approved by the Board. [Exh. Petitioners-DPS-1 ¶ 25]

16. Any party in this proceeding may comment on the August 1, 2012 filing, including a request for a Board investigation under the GMP Plan. [Exh. Petitioners-DPS-1 ¶ 26]

17. The \$144 million guaranteed savings amount shall be calculated in the manner described in the findings. GMP will file an annual report of merger-related savings for ten years and thereafter as directed by the Board. [Exh. Petitioners-DPS-1 ¶¶ 25, 26]

18. In Years 1-3, Guaranteed Merger Savings shall be reflected in base rates as a credit to the GMP base rate cost of service. In Years 4-8, Shared Savings shall flow to customers on a percentage basis and be reflected in rates as follows:

a. GMP’s base rate cost of service will be credited using the following estimates (“Savings Estimates”):

- i. Year 4: Estimated at \$10,500,000
- ii. Year 5: Estimated at \$12,000,000
- iii. Year 6: Estimated at \$13,000,000
- iv. Year 7: Estimated at \$14,000,000
- v. Year 8: Estimated at \$14,500,000

b. The annual savings (“Annual Savings”) shall be the difference between Base O&M Costs included in the base adjustment (as set forth above) and the actual O&M costs during the same period (“Actual O&M Costs”). Actual O&M Costs shall exclude the same categories of costs excluded from Base O&M Costs as indicated in findings. 50% of the annual savings will be shared with customers in Years 4-8 (“Adjusted Annual Savings”). Any variance between the Savings Estimates and the Adjusted Annual Savings will be reflected as a billing

adjustment when the next Earnings Sharing Adjustment Mechanism (“ESAM”) is implemented.
[Exh. Petitioners-DPS-1 ¶27]

19. Beginning in Year 9, 100% of all merger related savings will flow to customers, and O&M Costs included in base rate adjustments shall be based on actual costs, traditional ratemaking principles, and the terms of any alternative regulation plan then in effect. [Exh. Petitioners-DPS-1 ¶ 28]

Tariff and Rate Integration

20. Tariffs. GMP and CVPS residential tariffs shall be integrated on October 1, 2013 and all other GMP and CVPS tariffs shall be integrated after the Board approves a new fully allocated rate design for all customer classes. [Exh. Petitioners-DPS-1 ¶ 30, AIV MOU ¶ 6]

21. Cost of Service. Cost of service review shall be as provided under the GMP Alternative Regulation Plan for rates to be effective prior to October 1, 2014, and there shall be a traditional cost of service review proceeding (which shall not affect the Base O&M Costs as defined in Condition 15) for rates effective on or after October 1, 2014. [Exh. Petitioners-DPS-1 ¶31]

22. GMP shall file a request for a revised rate design no later than October 15, 2014, and GMP and the DPS shall use all reasonable efforts to assure that the proceeding is completed within nine months. As part of the rate design proceeding, GMP will account for the differences in costs associated with serving load at the distribution and transmission level, and will also account for the differences in costs associated with the particular voltage levels at which transmission service is provided. GMP shall continue to serve International Business Machines Corporation (“IBM”) on its current C&I Transmission Service Rate and maintain the existence of this rate class, subject to approved rate adjustments and subject to approval by the Board of the new rate design. [Exh. Petitioners-DPS-1 ¶ 32, Petitioners Cross-15 ¶¶ 5, 6]

Employment and Rutland Area Provisions

23. Other than with respect to executive officers, there shall be no layoffs or mandatory relocations of GMP or CVPS employees in connection with the acquisition and merger. [Exh. Rutland-Cross-1 ¶ 1(b)]

24. While GMP cannot control natural turnover or retirements, in connection with GMP's expectation and intention to maintain proportional levels of its employee base headquartered in the Rutland area, it shall report to the City of Rutland on such levels five (5), eight (8) and ten (10) years from the effective date of the merger. [Exh. Rutland-Cross-1 ¶ 1(c)]

25. GMP shall locate its Headquarters for Operations and Energy Innovation Center in Rutland City or Rutland Town. The Headquarters for Operations shall direct activities consistent with, but not limited to, operations currently conducted out of CVPS's Post Road facility. The Energy Innovation Center shall serve as a catalyst for innovative programs related to renewable energy, efficiency, customer service options, smart grid technology, and new product offerings. [Exh. Rutland-Cross-1 ¶ 1(d), (e)]

26. GMP shall initiate a collaborative, stakeholder-based engagement process with Rutland community leadership to identify a suitable and appropriate site in downtown Rutland for construction or redevelopment of a new facility. GMP shall also work with local leaders on a plan to repurpose existing CVPS facilities. [Exh. Rutland-Cross-1 ¶ 1(f)]

27. GMP shall establish a solar city program in Rutland County resulting in the Rutland area becoming the leading solar generation center in Vermont. [Exh. Rutland-Cross-1 ¶ 1(g)]

28. GMP shall create and fund a \$100,000 "Open for Business" fund to be administered by the Downtown Rutland Partnership and a \$100,000 "Green Growth" fund to be administered by the Rutland Economic Development Corporation. [Exh. Rutland-Cross-1 ¶ 1(h)]

29. GMP shall continue CVPS's historic level of leadership and participation in the community. [Exh. Rutland-Cross-1 ¶ 1(i)]

Miscellaneous

30. The DPS, IBM, and Rutland MOUs are approved.

31. GMP and CVPS shall agree to amend the Agreement for Joint Ownership, Construction and Operation of the Highgate Transmission Interconnection to require that any action require the affirmative vote of at least three owners representing a majority of the ownership shares. [Nolan pf. at 5]

32. The Petitioners shall file a letter notifying the Board of the completion of the merger, within one week of such completion.

Dated at Montpelier, Vermont, this __ day of __ 2012.

_____)
) PUBLIC SERVICE
)
) BOARD
)
) OF VERMONT
)
_____)

OFFICE OF THE CLERK
FILED: _____
ATTEST: _____
Clerk of the Board

Attachment A- Appearances

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Geoff Commons, Esq.
For Vermont Department of Public Service

Donald J. Rendall, Jr., Esq.
Mari M. McClure, Esq.
For Green Mountain Power Corporation

Peter H. Zamore, Esq.
Benjamin Marks, Esq.
Charlotte B. Ancel, Esq.
Sheehey Furlong & Behm P.C.
For Green Mountain Power Corporation

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Kimberly K. Hayden, Esq.
John H. Marshall, Esq.
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For Central Vermont Public Service Corporation

Morris L. Silver, Esq.
For Central Vermont Public Service Corporation
(re: Alternative Regulation Plan)

James A. Dumont, Esq.
For AARP

Leslie A. Cadwell, Esq.
Gravel and Shea PC
For Ampersand Gilman Energy LLC & Affiliates

Karen K. O'Neill, Esq.
S. Mark Sciarrotta, Esq.
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Leonard H. Singer, Esq.
Adam T. Conway, Esq.
Couch White, LLP
For International Business Machines

William A. Fead, Esq.
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Edward B. French, Jr., Esq.
Stackpole & French Law Offices
For Town of Stowe Electric Department

Sandra Dragon, President
William Driscoll, Vice President
For Associated Industries of Vermont

Paul Burns, Executive Director
For Vermont Public Interest Research Group

Andrew G. Costello, Esq.
For City of Rutland, Vermont

Vincent Illuzzi, Esq.
For Vermont Residents and Vermont Ratepayers