

STATE OF VERMONT  
PUBLIC SERVICE BOARD

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

PSB Docket No. 7770

PREFILED REBUTTAL TESTIMONY AND EXHIBITS OF  
CHRISTOPHER L. DUTTON ON BEHALF OF  
VERMONT ELECTRIC POWER COMPANY, INC. AND VERMONT TRANSCO LLC

MARCH 8, 2012

The purpose of Mr. Dutton’s rebuttal testimony is to respond to concerns expressed about VELCO’s past, present and potential future decision-making and to proposals about VELCO’s governance advanced by witnesses for the Stowe Electric Department and Washington Electric Cooperative, Inc.

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1 Q. Please state your name, occupation and business address.

2 A. My name is Christopher L. Dutton. I am President and CEO of the Vermont Electric  
3 Power Company, Inc., located at 366 Pinnacle Ridge Road in Rutland, Vermont.

4

5 Q. Did you prefile testimony in this proceeding previously?

6 A. Yes. I filed direct testimony on January 20, 2012 on issues related to ownership and  
7 governance of Vermont Electric Power Company, Inc. and Vermont Transco LLC. As in  
8 my previous testimony, I refer to both companies as "VELCO" unless a distinction  
9 between the corporate entities is necessary for clarity.

1 Q. What is the purpose of your rebuttal testimony?

2 A. My testimony responds primarily to concerns expressed by witnesses for some of the  
3 distribution utilities about VELCO's past, present and future decision-making and input  
4 on issues affecting those utilities and to the radical proposals regarding its future  
5 governance set forth in the prefiled testimony of Ms. Burt for the Stowe Electric  
6 Department and of Mr. Kandel and Mr. Patt for Washington Electric Cooperative, Inc.

7  
8 Q. What do you mean by VELCO's "governance"?

9 A. I use the term "governance" generally to mean who owns the Vermont Electric Power  
10 Company, Inc., how its Board of Directors is comprised and selected, and related issues,  
11 including the role and responsibilities of board members and shareholders' voting rights.

12  
13 Q. What problems have the parties identified that would justify the Public Service Board  
14 ordering a radical change in VELCO's governance?

15 A. In my view there is nothing in the testimony submitted in this proceeding to date that  
16 would justify conditioning the merger on the types of significant changes to VELCO's  
17 governance advocated by the witnesses for Stowe, WEC or the Department of Public  
18 Service. As discussed in my direct testimony and that of Ms. Brownell, the governance  
19 issue raised by the proposed merger, i.e., the potential for tyranny of the majority, is a  
20 narrow and common issue for which there are tried and true and much less draconian  
21 remedies. VELCO is performing well now and providing substantial benefits to  
22 Vermont, ratepayers in the state, and its owners/customers. The Board should be wary of  
23 requiring changes that might have negative impacts on that performance, as several of the

1 proposals advanced almost certainly would, or that would expose Vermont to significant  
2 and unnecessary expense and risks.

3 The concerns raised by Stowe Electric Department and the Washington Electric  
4 Cooperative and, to a lesser extent, Burlington Electric Department (BED) focus not on  
5 issues that can or should be addressed through governance changes, but instead on how  
6 VELCO's determinations with respect to tariff administration, transmission planning for  
7 reliability purposes, and operational decisions affect the state's distribution utilities in  
8 their capacity as customers of regulated transmission service. In general, these are  
9 management issues, not issues for resolution in the board room, and VELCO's  
10 determinations on such transmission-related issues are both constrained by tariff and/or  
11 other applicable standards, and thoroughly and effectively vetted through the Operating  
12 Committee (and, in the case of transmission planning, through the VSPC and ISO-NE as  
13 well), so that the rationale for those determinations can be tested. The fact that  
14 occasionally determinations made by VELCO on such issues have significant financial  
15 implications for one or more utilities, or that utilities in that situation may not agree with  
16 the determinations made by VELCO, is neither surprising nor indicative of a need for  
17 changes in VELCO's governance or decision-making.

18 Other examples that these utilities provide as reasons for concern about VELCO  
19 relate to issues that VELCO has no direct interest in or responsibility to resolve, but that  
20 involve VELCO because of a role it has assumed as a service to the distribution utilities,  
21 e.g., acting as Vermont's assigned meter reader reporting Vermont's electric load to ISO-  
22 New England, or providing a forum for the discussion and resolution of issues among the  
23 distribution utilities themselves. Unfortunately, whenever VELCO's position or input

1 regarding any dispute between distribution utilities is consistent with the position of  
2 either Green Mountain Power or Central Vermont Public Service in these situations, an  
3 assumption is made that VELCO is acting under pressure from its larger owners. The  
4 merits of the position become irrelevant to the discussion and ultimately forgotten. In my  
5 opinion, this long-standing and pervasive assumption is a driving force behind the radical  
6 governance proposals being made in this proceeding. Regulatory decisions should be  
7 grounded on facts and the merits of a particular proposal instead of improper assumptions  
8 about motives and a misapprehension of the facts.

9  
10 Q. How does VELCO administer its tariffs, specifically the 1991 Vermont Transmission  
11 Agreement?

12 A. As the Board and the parties to this proceeding are acutely aware, electric service rates,  
13 terms and conditions must be set forth in approved tariffs from which the electric utility  
14 may not deviate absent special permission authorized by law. The 1991 Vermont  
15 Transmission Agreement (the "VTA"), like all utility tariffs, must be administered  
16 uniformly and without preferential treatment. If a service request falls within a tariff  
17 provision, the utility administering the tariff does not have discretion about whether to  
18 apply the provision to that particular request. There is judgment involved in the  
19 administration of any tariff, of course, but the utility must exercise that judgment in  
20 accordance with the tariff's terms, good utility practice, sound engineering practices, and  
21 long-standing regulatory principles like non-discrimination and reasonableness. That is  
22 how VELCO administers the VTA generally and how it administered the tariff in  
23 connection with the Lamoille County Project, which Ms. Burt refers to in her testimony.

1           Unfortunately, when a small utility in Vermont experiences significant load growth  
 2           requiring infrastructure upgrades to maintain reliable electric service, the costs of those  
 3           upgrades must be allocated to the utility according to criteria established in the VTA, and  
 4           those costs may be more difficult for a small utility to bear in comparison to a utility with  
 5           a larger and more geographically diverse customer base. This is what happened in  
 6           Stowe's case with the Lamoille County Project.

7                       Following the dispute over cost allocation for the Lamoille County Project,  
 8           VELCO saw an opportunity to make its judgments about tariff administration more  
 9           transparent. Working with representatives from a number of distribution utilities,  
 10          VELCO developed the Vermont Transmission Administration Manual ("VTAM") which  
 11          provides guidelines for administering the 1991 Vermont Transmission Agreement. *See*  
 12          Exhibit VELCO-CLD-3. The VTAM also includes a cost-allocation dispute resolution  
 13          process to help VELCO and its owners/customers avoid another dispute like the one over  
 14          costs for the Lamoille County Project.

15  
 16    Q.       Please provide your perspective on the Operating Committee's discussion of CVPS's  
 17              suggestion that certain other utilities should be paying more for line losses associated  
 18              with the B22 line and VELCO's role in that discussion.

19    A.       The dispute over line losses on the B22 line between Central Vermont Public Service and  
 20              several other utilities, including Morrisville Electric, is an example of the Operating  
 21              Committee serving as a forum for the discussion and, ideally, the resolution of disputes  
 22              among the distribution utilities themselves. The B22 is a sub-transmission line controlled  
 23              by Central Vermont Public Service, and service over the line is governed by Central

1 Vermont Public Service's tariff. In 2008, VELCO, along with the Department of Public  
2 Service, helped facilitate a resolution of a dispute about the line between Central  
3 Vermont Public Service and others.

4 The most recent dispute about the B22 arose when CVPS suggested that it should  
5 be compensated by other utilities for losses that were still being incurred over the line. In  
6 the course of those discussions, Morrisville Electric suggested that the line could be  
7 opened to eliminate the losses. VELCO examined the reliability effects of the request,  
8 determined that opening the line would negatively impact reliability, and reported to the  
9 group that, because of the reliability impacts, opening the line was not a viable option for  
10 resolving the issue over losses. *See* VELCO's presentation to the Operating Committee  
11 regarding this issue, attached as Exhibit VELCO-CLD-4, VELCO did not advocate in  
12 support of CVPS's position on cost recovery, and the Operating Committee never had the  
13 authority, as suggested by Ms. Burt, to force three municipalities into a new agreement  
14 contrary to established FERC tariffs. *See* Ms. Burt's direct testimony at page 14. CVPS  
15 ultimately let the matter drop. As in the earlier controversy about the B22, VELCO's  
16 facilities, tariff, and service were not at issue, but the Company was in a position to assist  
17 the parties by providing critical system information as well as an informal forum in which  
18 to raise and seek a non-litigated resolution to a potential dispute.

19  
20 Q. Are there any other examples cited by utilities in their testimony to which you would like  
21 to respond?

22 A. Yes, there is one more such example that I think requires a response because of the  
23 suggestion that it illustrates a tendency since the merger was proposed for VELCO to

1 defer to GMP and be less concerned about its smaller owners. *See* Mr. Nolan's testimony  
2 at page 9. Mr. Nolan and Ms. Burt both describe a disagreement that arose in the  
3 Operating Committee regarding the correction of errors that occur from time to time in  
4 the reporting of metering data. The ISO-NE tariff allows for correction and financial  
5 resettlement in connection with such errors going back three months. Beyond that  
6 timeframe there is no opportunity for correction. Last year the Operating Committee  
7 unanimously agreed that the Vermont utilities would "true-up" for such errors among  
8 themselves going back as long as six years. When VELCO's lawyers became aware of  
9 the Committee decision, they conferred with FERC counsel and advised the Operating  
10 Committee that implementing their decision would require FERC approval. They also  
11 advised the committee that there was no guarantee of approval in light of the existing ISO  
12 tariff addressing the correction period. The Committee indicated it wanted to proceed  
13 with a filing. When an agreement was drafted to accompany the FERC filing and it came  
14 back before the Operating Committee for approval; however, GMP told the committee  
15 that it had reconsidered its original approval of the true-up concept and thought there  
16 were real advantages to adhering to the ISO correction period going forward. In the  
17 course of discussion in the Operating Committee on the issue, VELCO's attorney  
18 expressed the opinion that it would not be advisable to proceed with a FERC filing if one  
19 of the Vermont utilities opposed the filing. At the same meeting, however, VELCO  
20 management suggested that the issue be tabled so that it could work with parties to try to  
21 reach an amicable resolution. GMP has since agreed to support the filing. We expect that  
22 a final true-up agreement will be endorsed by the Operating Committee at its next  
23 meeting and that a filing will be made with FERC seeking approval of the agreement. In

1           this instance, far from deferring to GMP, VELCO worked to achieve the outcome sought  
2           by the other utilities. *See* minutes of the Operating Committee meetings of July, 11,  
3           August 18, October 20, and November 17, 2011 attached as part of Exhibit VELCO-  
4           CLD-5.

5  
6    Q.    What is your view of Ms. Burt's testimony on behalf of the Stowe Electric Department  
7           that VELCO "made no effort to seek mutually beneficial solutions that would mitigate  
8           the financial impact of the [Lamoille County Project] on Stowe Electric"?

9    A.    I strongly disagree with her view. Stowe disregarded the dispute resolution protocol  
10           contained in the 1991 Vermont Transmission Agreement and failed to seek a mediated  
11           solution. Instead, Stowe chose litigation at the FERC over negotiations and discussion  
12           with VELCO. Stowe incurred approximately \$1,469,027 in legal fees on behalf of its  
13           roughly 4,000 customers as a direct result of its decision to litigate, and it later sought to  
14           treat those costs as a regulatory asset amortizable over ten years as if the costs were  
15           related to construction of the Lamoille County Project. The Department of Public  
16           Service opposed that treatment because Stowe had declined to consider an alternative  
17           means to resolve its dispute with VELCO. Ultimately, VELCO, not Stowe, proposed the  
18           solution that led the parties, including the Department of Public Service, to settle the  
19           FERC litigation. I attach the Public Service Board's order denying Stowe's request for  
20           an accounting order because it provides a factual context to the dispute that Ms. Burt's  
21           testimony lacks. *See* Exhibit VELCO-CLD-6. The attempt to use VELCO's ownership  
22           structure and its governance as a scapegoat for Stowe's choices regarding the Lamoille  
23           County Project should be met with significant skepticism.

1 Q. Would appointing Ms. Burt or another Stowe Electric Department official to the VELCO  
2 board have avoided the litigation over the Lamoille County Project?

3 A. No. The Lamoille County Project dispute centered on VELCO's administration of the  
4 1991 Vermont Transmission Agreement in addition to the accuracy of VELCO's original  
5 project cost estimate. Tariff administration and project cost estimates are the  
6 responsibility of VELCO's management, not its board of directors. Ms. Burt confuses  
7 the respective roles of management and the board by suggesting that the Lamoille County  
8 Project dispute could have been resolved in the VELCO board room irrespective of the  
9 provisions in VELCO's FERC-approved tariff. Even more troubling is the notion that a  
10 Stowe Electric Department official needs a seat on the VELCO Board so that the official  
11 can advocate and vote for Stowe's own parochial interests when acting as a VELCO  
12 director. A VELCO director must act in the interests of all of its shareholders as I  
13 explained in my direct testimony at page 22, lines 7-16. Parochial interests may inform  
14 the board of directors' view of how well VELCO's management operates the Company,  
15 but board decision-making must focus on the Company as a whole rather than the  
16 individual interests of certain owners.

17 I must add that following the FERC litigation over the Lamoille County Project,  
18 VELCO dramatically improved the Company's transmission project cost estimates. It is  
19 now viewed as a leader in the region on cost estimate methodology. Similarly, VELCO's  
20 customer communication on tariff administration is now much improved and formalized  
21 through the Operating Committee, which affords customers a significant opportunity to  
22 influence operational decisions made by VELCO's management. By working together  
23 through the Operating Committee, VELCO and its distribution utility customer/owners

1 also have the opportunity to address operational issues of mutual concern and to resolve  
2 differences on issues before resorting to dispute resolution mechanisms or litigation.

3

4 Q. Mr. Patt, on behalf of the Washington Electric Department, recommends that the Public  
5 Service Board consider requiring VELCO to become a cooperative or other public entity  
6 “due to the inherent conflict between fiduciary duties to equity owners versus the general  
7 public.” What is your response to that recommendation?

8 A. I do not agree with it. As I explained in my direct testimony at page 26, lines 4-8,  
9 VELCO’s public service obligations and the fiduciary duties it owes to shareholders are  
10 consistent. VELCO exists to provide an essential public service and its shareholders  
11 benefit financially only if the company operates in accordance with its public service  
12 charter and applicable laws. Moreover, in VELCO’s particular case, when shareholder  
13 returns are maximized, the primary beneficiaries of those enhanced returns are Vermont’s  
14 electric ratepayers. The “inherent conflict” Mr. Patt describes may ring true for private  
15 companies with no public service obligation, but not for a regulated public utility like  
16 VELCO whose shareholders are electric distribution utilities that use the VELCO  
17 dividends to help keep retail rates in check.

18

19 Q. What is your view about Mr. Kandel’s recommendation to consider restructuring VELCO  
20 into a non-profit, tax-exempt, public or quasi-public entity?

21 A. Mr. Kandel is employed by the National Rural Utilities Cooperative Finance Corporation,  
22 and he suggests that restructuring VELCO could allow the company to save money if his  
23 employer financed VELCO’s debt. Mr. Kandel offers no analysis of the restructuring

1 options he recommends that the Public Service Board investigate, nor does he identify the  
 2 costs of such an investigation to VELCO, its owners, the Public Service Board, the  
 3 Department of Public Service or other interested parties.

4 The issue of public ownership through the State of Vermont has recently been  
 5 under discussion at the Vermont General Assembly. As several witnesses before the  
 6 Senate Finance Committee have testified, including the State Treasurer and her financial  
 7 advisor, public ownership is fraught with problems and would be extremely expensive to  
 8 achieve. Mr. Kandel's testimony fails to acknowledge that VELCO is not for sale and he  
 9 ignores the costs associated with forcing VELCO's shareholders to give up their  
 10 investment and restructure the company. Following Mr. Kandel's advice to study a  
 11 public option for VELCO is not a prudent use of public funds or the Public Service  
 12 Board's time.

13  
 14 Q. How do you respond to Mr. Patt's position that the Washington Electric Cooperative  
 15 should have an official serve on VELCO's board to address gaps in communication about  
 16 major initiatives and equity calls that affect the Cooperative?

17 A. Like Ms. Burt's testimony, Mr. Patt's testimony implies that membership on the VELCO  
 18 Board of Directors is a panacea to every complaint about VELCO's management and its  
 19 operational decisions. Attending a VELCO board of directors meeting six times a year is  
 20 not a solution appropriately tailored to the communication problem that Mr. Patt raises in  
 21 his prefiled testimony. If better communication about VELCO initiatives and equity  
 22 calls is Mr. Patt's main concern, I recommend a different and more appropriate strategy  
 23 to address the perceived gap.

1           Mr. Patt should consider attending an Operating Committee meeting or even  
2           reading the Operating Committee meeting materials that VELCO posts online for public  
3           consumption. The Operating Committee addresses a wide range of issues of mutual  
4           concern to VELCO and its customer/owners. I can find only one Operating Committee  
5           meeting (October 2011) where a Washington Electric Cooperative representative (its  
6           outside counsel) was present since the new committee was formed in 2009. I have  
7           attached to my testimony a number of Operating Company meeting minutes over the last  
8           few years to show the range of issues the committee discusses and how it seeks to resolve  
9           those issues through open dialogue. *See Exhibit VELCO-CLD-5.*

10           For up-to-date information on financial issues, Mr. Patt or one of his designees  
11           could also participate in the CFO Forum convened by our Treasurer, Michele Nelson.  
12           Finally, Mr. Patt could request to meet with me or other members of VELCO's  
13           management team to discuss his concerns just like other utility executives do when a  
14           VELCO decision affects their utility's business, finances, or service to customers.

15  
16    Q.    What is your opinion on Stowe's proposal that each distribution utility, except members  
17           of VPPSA, should have an official serve as a VELCO director and that each should have  
18           an equal voice in governance irrespective of ownership interests?

19    A.    I strongly disagree with it. I do not understand why the Public Service Board or  
20           VELCO's shareholders would find this a benefit to the Company, its owners, or the  
21           public VELCO serves. It would give utilities with a small stake in VELCO decision  
22           making power that is out of proportion to their stake and risk in the company. Ms. Burt's  
23           testimony lacks a single example of an investor-owned public service company – or any

1 private company for that matter – that utilizes this form of governance. I have not  
2 examined the implications of the proposal on VELCO’s ability to raise capital, but I  
3 would suspect that bond holders would be leery to invest in VELCO if a 1% owner has  
4 power on par with a 30% owner (or even a 70% owner) considering that the 1% owner  
5 bears substantially less risk in every decision the company makes. Ms. Burt’s proposal  
6 might be well suited to the Board of an advocacy organization or trade association, but it  
7 is inappropriate for an investor owned company with approximately \$900 million in  
8 assets.

9  
10 Q. What is your response to Mr. Mullett’s proposal that the combined company post-merger  
11 “not have any role in the designation of independent/public directors of VELCO”?

12 A. While I agree with the vast majority of Mr. Mullett’s testimony, for the same reasons I  
13 disagree with Ms. Burt that every owner should have equal authority in governance  
14 matters, I disagree that it would be appropriate to restrict the combined company post  
15 merger from any participation in the selection of independent directors. All of VELCO’s  
16 utility shareholders should have the opportunity to elect the independent members of the  
17 company’s board. Otherwise, I believe it is worthwhile for the Public Service Board to  
18 consider Mr. Mullett’s suggestion that it set some parameters concerning governance to  
19 address concerns about “tyranny of the majority” and allow VELCO’s board and  
20 shareholders to fashion a governance structure that meets the Company’s needs within  
21 those parameters.

22

- 1 Q. Do you have anything to add to your testimony?
- 2 A. No, not at this time.