

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7770

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

REBUTTAL TESTIMONY OF AVRAM PATT
ON BEHALF OF WASHINGTON ELECTRIC COOPERATIVE, INC. (WEC)

March 8, 2012

Summary of Testimony

1 Mr. Patt addresses VELCO's and Petitioner's testimonies regarding the impact of the merger
2 upon the governance and operation of VELCO.

3 Exhibits: WEC 13 (AP-13). NRECA Fact Sheet.

4

1 **1Q. Do you have experience and familiarity with the organization and operation of**
2 **public power electric utilities?**

3 1A. Yes. As noted in my previous testimony, I have been General Manager of the
4 Washington Electric Cooperative, Inc., since 1997. Prior to becoming General Manager,
5 I served on WEC's Board of Directors for eight years. I have also been active with the
6 National Rural Electric Cooperative Association ("NRECA"), the national trade
7 organization representing electric cooperatives across the country. While serving on
8 various national and regional committees for NRECA, attending conferences, and
9 conferring with colleagues across the country, I have developed a familiarity for how
10 cooperatives are organized and operated.

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12 **2Q. A number of witnesses have commented that the Department's proposal to**
13 **restructure the VELCO Board of Directors is too political. See Dutton pft. at p. 27,**
14 **l. 10-13; Brownell pft. at p. 43, l. 10-13. Do you agree?**

15 2 A. No, I do not believe this is a fair critique. The concerns are vague, unsubstantiated, and
16 the facts indicate just the opposite. Public power entities, including cooperatives, are
17 often governed by directors or trustees that have been elected from the general public. It
18 is my understanding that municipal utilities often have governing bodies that are
19 appointed by elected officials. There has been no evidence that public power entities
20 suffer from systemically poor governance or management resulting from the public
21 election or appointment of their governing boards. Such governing boards are able to
22 discharge their fiduciary obligations while serving their respective utilities.

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Electric cooperatives, either distribution or generation and transmission utilities, serve 42 million people in 47 states that cover approximately three quarters of the United States' land mass. *See* Exhibit WEC 13 (AP 13), NRECA Fact Sheet. The prevalence of public power across the nation demonstrates that public involvement in the governing process of utilities is successful. In WEC's experience, publically elected directors helped WEC focus its mission to serve its ratepayers and the public good. It has not been otherwise distracted or adversely impacted by partisan politics. A couple of recent examples include the issues of retail competition and the development of generation resources. During the period when most of the utility industry was advocating for retail competition and for divesting of generation resources, WEC's elected board advocated against competition, and after careful analysis chose to build a generating facility. These positions helped provide economic stability and reliable, renewable energy to our membership. On a day to day basis, WEC's elected directors oversee the management of the utility with no other objective than serving our ratepayer members.

Therefore, one cannot presume that Professor Dworkin's proposal for General Good Directors serving on VELCO's governing board will have a detrimental effect. In contrast, it is highly likely that the General Good Directors proposed by the Department will be able to discharge their fiduciary obligations to VELCO with no less difficulty than public power directors at their respective utilities. In fact, it is highly probable that they will provide a positive governing influence as truly independent directors not

1 beholden to the interests of any particular distribution utility. Moreover, the selection
2 process, through a transmission nominating board, is well designed to cultivate highly
3 competent directors that are shielded from undue partisan influence as opposed to the ad
4 hoc election process currently in place at VELCO.

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7 **3Q. VELCO asserts that its current governing structure is particularly able to protect**
8 **minority shareholder interests. Do you agree?**

9 3 A. No. Its Operating Committee is a perfect example. VELCO's own governing structure
10 expressly excludes utilities such as WEC, with a load share of less than 4%, from the
11 Operating Committee. See VELCO's Responses to WEC's Interrogatories and Requests
12 to Produce at WEC:VELCO 1-4. It is true that VELCO extended WEC an offer to join
13 the Operating Committee this past fall. However, it subsequently has failed to provide
14 notice to WEC of ongoing meetings and agendas. Such exclusion has adversely
15 impacted WEC. Recently, the operating committee addressed the development SQRP
16 interpretations and presented a final draft to the Vermont Department of Public Service
17 for review. WEC was neither notified nor invited to the Operations Committee meeting
18 that discussed the development of these service quality standards. WEC was effectively
19 excluded from the development of service quality standards that will likely be applied to
20 its operations.

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1 **4 Q. Ms. Brownell opined that the addition of General Good Directors would adversely**
2 **impact VELCO's ability to obtain director's and officer's insurance. Do you agree**
3 **with this opinion?**

4 4 A. No. I do not believe the General Good Directors selected through a public process as
5 outlined by Professor Dworkin would adversely impact the ability of VELCO directors
6 and officers to obtain liability insurance ("D&O" Insurance). All of WEC's directors are
7 elected from the general public, and it has been able to obtain D&O Insurance without
8 any difficulty over the years. The Department's proposal merely has a minority of the
9 VELCO directors selected through a public process and vetted by a transmission
10 nominating board. Accordingly, based upon WEC's experience and ability to obtain
11 D&O insurance for publically elected directors, it seems highly unlikely that the concern
12 raised by Ms. Brownell will be realized.

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14 **5 Q. Does WEC share the concerns raised by BED and VPPSA as it pertains to the**
15 **governance of the Highgate Joint Ownership Agreement as a result of the proposed**
16 **merger?**

17 5 A. Yes. WEC also supports BED's and VPPSA's suggestion that the operating agreement
18 be amended to require an affirmative vote of at least three owners representing a majority
19 of the ownership shares to insure that at least one non transmission owning utility
20 supports future decisions.

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1 **6 Q. Vermont Senator Vincent Illuzzi proposes a 51% public ownership of VELCO.**
2 **Does WEC support this proposal?**

3 6 A. As set forth in my previous testimony, WEC believes that a public ownership option
4 should be fully explored, although we have not recommended a specific structure.
5 There are many examples of how public or quasi public ownership of generation and/or
6 transmission electric utilities efficiently serve the public good and the ratepayers. Some
7 examples include:

- 8 • New York Public Power Authority (NYPA), which generates power as well as
9 operating 1,400 miles of transmission lines, and which provides power to
10 Vermont ratepayers as well. NYPA is the largest state power agency and was
11 founded in 1931, culminating a process supported by several Governors
12 beginning in 1907.
- 13 • The Tennessee Valley Authority (TVA), founded in 1933, is the nation's largest
14 public power provider. It is a corporation of the U.S. government.
- 15 • Bonneville Power Administration (BPA), founded in 1937, is a federal agency
16 that in addition to being a power supplier, operates over 15,000 miles of
17 transmission.
- 18 • Hydro Quebec, a major power supplier to Vermont, is a utility whose sole
19 shareholder is the Province of Quebec.
- 20 • Generation and Transmission Cooperatives. Most of the nation's 841 electric
21 distribution cooperatives are themselves members of 65 Generation and

1 Transmission Cooperatives (“G & Ts”) which generate or procure power supply
2 as well as transmission.

- 3 • The entire state of Nebraska is served by public power districts, municipal
4 utilities and cooperatives.

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6 **7Q. Is the selection of directors of the entities set forth above “political?”**

7 **7A.** Yes, if by “political” we mean that selection of all or some of the board members is the
8 responsibility of elected officials accountable to the public or by direct election. The
9 boards of NYPA and the TVA are appointed by elected officials. The BPA is a federal
10 agency. As the sole shareholder, Quebec’s provincial government is involved in selection
11 of Hydro Quebec’s directors, one of whom is presently the Deputy Minister of Natural
12 Resources and Wildlife. The directors of the G & T cooperatives represent the local
13 distribution co-ops and are appointed by their consumer-elected boards. The governing
14 boards of the Nebraska utilities are democratically elected. As noted above, I am not
15 aware that the governance structure of these entities have created instability.

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17 **8Q. Regardless of whether there is public or quasi-public ownership of a utility’s assets,**
18 **are General Good Directors serving on VELCO’s board of directors beneficial?**

19 **8. A.** As I stated in my prefiled testimony, even though he did not propose it, Professor
20 Dworkin’s governance proposal could work well for a public or quasi public entity. On
21 its own without public asset ownership, his proposal does not call for a board that is
22 entirely “politically” selected, but rather for a balanced board with some General Good

1 Directors in addition to direct utility representation. The petitioners and some other
2 parties have imparted a negative connotation to the term “political” but have provided no
3 evidence whatsoever that public governance presents such concerns. On the contrary,
4 the proposal offers advantages over the present VELCO governance structure as
5 described in Professor Dworkin’s prefiled testimony. His modest, balanced proposal is
6 specifically designed to avoid the potential for instability and abuse.

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8 **9. Q. Does this conclude your testimony at this time?**

9 9. A. Yes.

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