STATE OF VERMONT
PUBLIC SERVICE BOARD

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

REPLY BRIEF

SUBMITTED BY

VERMONT PUBLIC POWER SUPPLY AUTHORITY

May 4, 2012

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Introduction

The Vermont Public Power Supply Authority ("VPPSA") filed a brief on this matter on April 23, 2012. In its brief, VPPSA addressed several issues and recommended actions by the Vermont Public Service Board ("Board") if it approves the proposed merger. This Reply Brief addresses issues raised by two other Parties in their briefs and further addresses the VELCO governance issue.

VELCO Governance

On May 2, 2012, Green Mountain Power Corporation ("GMP") filed copies of a Letter Agreement and Shareholders' Agreement that were negotiated among the VELCO shareholders and the Department of Public Service ("DPS").

The Shareholders' Agreement represents a good faith, negotiated compromise resolution of a number of issues that were left open in the Memorandum of Understanding ("MOU") among Petitioners and the DPS. (See Petitioners/DPS-1)

The Shareholders' Agreement is consistent with the MOU; is consistent with Title 11A, Section 7.32, which allows shareholders broad discretion to enter into such agreements; and is consistent with corporate governance best practices. It, for the first time in VELCO history, sets forth a set of shareholder voting rights and responsibilities and is intended to improve corporate governance. It is consistent with the objective of resolving the "tyranny of the majority" issue, which all parties agree should be resolved as a condition of any merger approval in this docket.

The Letter Agreement addresses the "chicken and egg" problem of implementing the Shareholders' Agreement. That is, the Shareholders' Agreement must bind VLITE as well as the other shareholders, but VLITE cannot become a shareholder until a merger is approved and the stock is transferred to it from CVPS, which cannot be done until the other shareholders waive their rights of first refusal and/or the VELCO By-laws are amended. It, too, is fully consistent with the MOU and with the Shareholders' Agreement.

Most of the VPPSA member managers have endorsed the terms of the Letter Agreement and Shareholders' Agreement (subject to final governing board approval). As of the writing of this brief, only the Village of Hyde Park Electric Department has stated that it will not execute either the Letter Agreement or the Shareholders' Agreement. The Village of Johnson has stated its intention to execute the Shareholder Agreement and to waive its right of first refusal, but that it is not inclined to sign the Letter Agreement.

Together, the Letter Agreement and the Shareholders' Agreement demonstrate that the VELCO governance issue has been resolved. The Board need not, and should not, "approve" either agreement. Entering into such agreements is authorized by Vermont corporate law and requires no approval under any provision of Title 30. While VPPSA has taken no position on whether the merger should be approved, the Board should, as a condition of the merger if it is approved, require Petitioners to file, in a post-Order compliance filing, a fully executed copy of the Shareholders' Agreement to demonstrate that the conditions on VELCO governance have been satisfactorily met.[1]

Other Parties' Briefs

Town of Stowe Electric Department ("SED"). In contradiction to Mr. Mullett's testimony, SED stated in its brief at page 3 that ". . . issues of VELCO governance fall squarely within the jurisdiction of the Board . . .", citing 30 V.S.A. § 209(a)(3). SED

[1] The Board should likewise condition any such approval on a compliance filing documenting that the TRANSCO Operating Agreement and the Highgate Joint Ownership Agreement have been amended, as agreed to by the Petitioners.

misunderstands Mr. Mullett's testimony, or § 209(a)(3), or both. Section 209(a)(3), by its terms, gives the Board jurisdiction over the operations of a regulated utility in Vermont to ensure that its business, is "reasonable," "expedient," safe, convenient and an accommodation to the public. This is the essence of regulation. The issue addressed by Mr. Mullett is the internal management and governance of a private, for-profit corporation under Vermont's Corporations law, Title 11A. The Vermont Supreme Court has long recognized the difference between regulatory supervision and intruding into management. (See *Carpenter v. Home Telephone Co.* (1960) 122 Vt 50, 103 A2d 838. See also Order dated August 3, 2009 in PSB Docket No. 7307 [Investigation into Vermont Electric Utilities' Use of Smart Metering and Time-Based Rates] at p. 24, "This conclusion arose from the traditional balance between the Board's role as overseeing, but not managing, utility actions and the utility's ability to exercise discretion in the regular operation of the business.") In any event, as noted above, the VELCO management issue relevant to this docket (the tyranny of the majority) has been resolved, consistent with the views expressed in the testimony of Mr. Mullett, i.e., by the owners of VELCO.

SED continues to evidence confusion between VT TRANSCO, LLC and Vermont Electric Power Company, Inc. At page 7 of its brief, SED makes the argument, as it did during the hearings, that its (temporary) ownership of membership units in TRANSCO should entitle it to voting rights or board representation in VELCO. That is not how corporate law works. The shareholders of the corporation vote for directors of that

corporation. (See 11A § 7.28) Ownership in a separate legal entity is irrelevant to those corporate voting rights.

Washington Electric Cooperative ("WEC"). The brief of WEC contains one section that requires rebuttal. On page 8, WEC mischaracterizes the MOU as providing for the nomination of two independent public power directors by "BED, VEC, VPPSA, WEC and SED."

The MOU does not say that; it provides for the nomination by the public power utilities (MOU at 11c). VPPSA does not own any shares of VELCO, its members own VELCO shares. Accordingly, WEC's proposal that the "Board direct" that the independent public power directors be nominated ". . . with BED, VEC, VPPSA, WEC and SED each having one vote" is inconsistent with both the MOU and Vermont law. As noted in our brief, Title 11A is clear that shareholders elect directors and that shareholders are free to enter into shareholder agreements to provide, inter alia, how directors be elected. The Board should leave it to all of the public power VELCO shareholders to determine if they want to agree on a method to nominate the two independent directors other than by a vote of their shares. The public power utilities are perfectly capable of negotiating an agreement if they so desire and, again, the Board should not, nor does it need to, intrude itself into this management issue.

DATED at St. Johnsbury, Vermont, this 4th day of May, 2012.

VERMONT PUBLIC POWER SUPPLY AUTHORITY

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