

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

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.)

Docket No. 7770

**PREFILED DIRECT TESTIMONY OF
RICHARD H. SILKMAN, PH.D.
PETER A. BRADFORD**

**ON BEHALF OF
AARP**

JANUARY 13, 2012

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SUMMARY: DR. SILKMAN AND MR. BRADFORD ADDRESS THE PETITIONERS' PROPOSAL TO SATISFY THE WINDFALL SHARING ORDER

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**VERMONT PUBLIC SERVICE BOARD
DOCKET No. 7770**

**Prefiled Direct Testimony of
Richard H. Silkman, Ph.D.
Peter A. Bradford**

**On behalf of
AARP**

Section I Qualifications

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Q. Please state your names and business addresses.

A. Peter A. Bradford, P.O. Box 497, Peru, Vermont 05152.
Richard H. Silkman, 76 Main Street, Yarmouth, Maine 04096.

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Q. Mr. Bradford, please describe your educational background and prior work experience.

A. I am a graduate of Yale University (1964) and Yale Law School (1968). I chaired the New York State Public Service Commission (1987-1995) and the Maine Public Utilities Commission (1974-75 and 1982-87). I was a commissioner on the U.S. Nuclear Regulatory Commission (1977-82) and on the Maine PUC (1971-77 and 1982-87). During my terms on the Maine and New York State Commissions I participated in deciding more than 10,000 utility proceedings, including at least a dozen reviews of mergers and acquisitions. I was President of the National Association of Regulatory Utility Commissioners (1986-87) and was at different times a member of its committees on electricity, gas and communications as well as its Executive Committee. I was briefly Maine's Public Advocate (1982).

1 Since leaving the New York Public Service Commission, I have taught and written on regulatory
2 issues in the U.S. and abroad, including as an adjunct professor at the Vermont Law School, where I
3 taught a course on electric utility restructuring law and now teach a course entitled “Nuclear Power
4 and Public Policy”. I have also taught Energy Policy and Environmental Protection at the Yale School of
5 Forestry and Environmental Studies.

6 I have written a number of articles on utility regulation and energy policy, as well as one book
7 concerning energy policy. A complete resume is attached to this testimony as Exhibit AARP-PB/RS-1.

8

9 **Q. Have you held positions related to the electric industry in Vermont state government?**

10 A. I am one of Vermont’s two representatives on the Texas/Vermont Low Level Radioactive Waste
11 Disposal Compact Commission. I was a member and sometime chair of the Public Oversight Panel for
12 the Comprehensive Vertical Assessment of the Vermont Yankee Nuclear Power Plant (2008-10).

13

14 **Q. Mr. Bradford, please describe the nature of any other recent consulting activities involving the**
15 **electric power industry.**

16 A. I have testified in proceedings regarding power plant certification and cost recovery in several
17 states. I testified last September on behalf of the state of Vermont in Entergy v. Shumlin et. al., the
18 U.S. District Court suit by Entergy regarding the continued operation of Vermont Yankee. I have
19 advised on electric sector reform in several foreign countries. I have taken part in several colloquia
20 assessing the economics of nuclear power in the U.S. and am currently testifying on aspects of that
21 subject before the Nuclear Regulatory Commission.

22

1 **Q. Have you testified previously before the Vermont Public Service Board concerning electric**
2 **utility mergers and acquisitions in Vermont?**

3 A. Yes. Dr. Silkman and I testified in Docket 6107, Petition of Green Mountain Power for an
4 Increase in Rates. Our advocacy of a windfall sharing arrangement in the event of an acquisition
5 premium above book value was adopted by the Vermont Public Service Board expressly to prevent
6 unjust enrichment. (*Tariff Filing of Green Mountain Power Corp*, Docket 6107, Order of 1/23/01,
7 decided January 23, 2001). This requirement was, of course, carried forward into the Central Vermont
8 Public Service case (211 P.U.R. 4th 53, 2001) decided June 21, 2001. Dr. Silkman and I also submitted
9 testimony on behalf of AARP in the 2007 Public Service Board proceeding on the acquisition of Green
10 Mountain Power Company by a subsidiary of Gaz Metro of Quebec (256 P.U.R.4th 66, 2007). As a
11 result of a settlement, that testimony was withdrawn.

12

13 **Q. Please describe any other experience involving electric utility mergers and acquisitions.**

14 A. I testified in the Bell Atlantic/G.T.E. merger proceeding in Pennsylvania in 1999 and in the
15 Connecticut and New Hampshire reviews of the proposed merger of Consolidated Edison and
16 Northeast Utilities in 2000. I have also consulted but not testified in merger proceedings in several
17 other jurisdictions.

18 I lectured at the 1996 program on "Antitrust, Merger Guidelines, and Regulation of Utility
19 Consolidation" sponsored by the Michigan State Institute of Public Utilities and taught the section on
20 mergers at the 1997 NARUC summer program at Michigan State. The 1996 lecture was converted into
21 an article entitled "Gorillas in the Mist: Electric Utility Mergers in Light of State Restructuring Goals",
22 NRRI Quarterly Bulletin, spring 1997. I taught the session on "Competitive Markets and Anti-

1 Competitive Conduct: New Problems in Wholesale and Retail Markets" in the Massachusetts
2 Continuing Legal Education seminar on the newly enacted Massachusetts restructuring ordinance.

3

4 **Q. Have you testified before the Vermont Public Service Board on other matters?**

5

6 A. I testified on aspects of stranded cost recovery in 1996 and on one aspect of the purchase of
7 Vermont Yankee by Entergy in 2002.

8

9 **Q. Dr. Silkman, please describe your educational experience and prior work background.**

10 A. I received my B.A. in economics from Purdue University and my Ph.D. in economics from Yale
11 University. I have served on the faculties of the State University of New York at Stony Brook (1978-
12 1983) and the University of Southern Maine (1983-1986), where I also served as the Acting Director of
13 the Public Policy and Management Program (1986). I was appointed by Governor McKernan to
14 become the Director of the Maine State Planning Office (1987-1992), a cabinet level agency with
15 broad policy and planning responsibilities, including economic development, energy,
16 telecommunications, taxation, budgetary, land-use management and health care. In this capacity, I
17 chaired a number of state level committees and multi-agency task forces and was on the Board of
18 Directors of a variety of quasi-governmental agencies including the Maine Development Foundation,
19 the Maine Science and Technology Commission and the Maine World Trade Association. I also chaired
20 a number of Staff Advisory Committees of the National Governors' Association. I have been a member
21 of the Board of Directors of the Council of Governors' Policy Advisors ("CGPA"), an affiliate of the
22 National Governors Association (1988-1992), and its President (1990-1991).

1 I have continued to serve as a consultant on energy matters for a variety of clients across the
2 country. My clients in the energy area have included a trade association of Maine's largest industrial
3 consumers of energy, a Fortune 500 multi-state retail grocery company, a consortium of consumer
4 organizations, and a variety of municipal governments and agencies. In representing these clients and
5 others, I have negotiated special rate contracts with investor owned public utilities, have testified
6 before the Maine, Massachusetts, New Hampshire, Vermont, California and Pennsylvania Public
7 Utilities Commissions on matters of rate design, the justness and reasonableness of rates and electric
8 utility industry restructuring, and have been actively involved in electric utility restructuring issues and
9 legislation in a variety of states, including New Hampshire, where I was retained as a consultant by the
10 New Hampshire Legislature to assist in the structuring and evaluation of a comprehensive
11 restructuring settlement agreement with Public Service Company of New Hampshire.

12 Over the past decade, I have been active in the retail energy markets through CES. CES is one of
13 the largest energy broker/consultants in the northeast, procuring energy for approximately 3,000
14 commercial and industrial accounts, with a total annual spend of more than \$750 million. CES also
15 supplies "green" electricity in Maine under the Maine Renewable Energy brand to more than 2,000
16 residential and small commercial customers. (Additional information about CES can be found on our
17 web site at www.competitive-energy.com.)

18 In addition to the above activities, I have also advised clients on matters related to reform of the
19 New England Power Pool, where I was the first ever residential "end user" member, and in the
20 creation of and subsequent litigation against the policies of the Independent System Operator-New
21 England ("ISO-NE"). I have continued to be active on capacity and transmission-related issues.

1 In addition to these activities, I am a founding partner and principal in three energy ventures as
2 noted below:

- 3 • Beaver Ridge Wind, LLC, the developer, owner and operator of a 4.5 MW wind generation
4 project located in Freedom, Maine. This project began commercial operations on
5 November 1, 2008. It was the second commercial grade wind generation project
6 developed in Maine and remains the only such project in the CMP service territory. Total
7 project costs were in excess of \$12 million.
- 8 • GridSolar, LLC, a Maine-based company established to pursue Non-Transmission
9 Alternatives to major transmission upgrades in response to grid reliability concerns.
- 10 • Kennebec Valley Gas Company, LLC (“KVGC”), a company formed to develop an intra-state
11 natural gas pipeline and to provide natural gas delivery service to customers in central
12 Maine. KVGC has received conditional authorization from the Maine Public Utilities
13 Commission to operate as a pipeline and distribution utility within its proposed service
14 territory.

15

16 **Q. Please describe the work you have done over the past decade in Vermont.**

17 A. The following list of activities represents projects or assignments I have had in the State of
18 Vermont over the past decade.

- 19 • (2011) Saudek, Brock and Cheney – Retained to assist law firm in its representation of the
20 City of Montpelier in regards to a proposed new CHP plant in conjunction with the State of
21 Vermont.

- 1 • (2009) Vermont Legislature – Invited to provide advice and counsel related to the
2 structure and operation of New England wholesale electricity markets and their
3 implications for future power supply options and prices.
- 4 • (2007) Vermont Legislature – Retained to provide expert advice and counsel on matters
5 related to the appropriate property tax regimes for wind generation projects.
- 6 • (2007) Testimony filed on behalf of AARP in the Green Mountain Power Gaz Metro merger
7 (Filed jointly with Peter Bradford.)
- 8 • (2000 – 2003) Town of Rockingham in Vermont - to assist the Town in its efforts to
9 become a municipal electric utility and to acquire the Bellows Falls Hydro Electric
10 generation station (approximately 48 MW) located within the Town. As a part of this
11 effort, Dr. Silkman served as the lead witness for the Town of Rockingham in litigation
12 with the owner of the Bellows Falls Hydro plant over the assessed valuation of that plant
13 and in the bankruptcy proceeding involving U.S. Generation – New England in the
14 Baltimore circuit court.
- 15 • (2000) Testimony before the Vermont Public Service Board on behalf of the AARP on
16 matters related to the treatment of stranded cost and the reasonableness of rates for
17 Green Mountain Power (Filed jointly with Peter Bradford).

18

19 **Q. Is this testimony being sponsored jointly?**

20 A. Yes. We are jointly offering this testimony.

21

22 **Section II Overview and Summary**

1

2 **Q. Please summarize your conclusions and your recommendations in this case.**

3

4 A. Our conclusions and recommendations are as follows:

5

6 1. Eleven years ago, the PSB concluded that the consequences of a CVPS bankruptcy would be
7 unacceptable for Vermont. Persuaded that bankruptcy could be avoided only by an infusion
8 of money from customers, the Board ordered that customers pay rates based on the
9 proposition that certain imprudently incurred costs could be collected from customers. As the
10 Board recognized, this decision contravened two of the oldest and most fundamental
11 ratemaking principles: customers do not pay for imprudently incurred costs or for costs not
12 used and useful. In essence, the Board chose what it considered the lesser of two evils in
13 requiring that customer supplied capital be substituted for capital normally supplied by
14 investors and lenders, who refused to deal with CVPS, weakened as it was by its imprudent
15 business practices.¹

16

17 2. Knowing that Vermont's utilities would make attractive takeover targets once their financial
18 health had been restored by the infusion of customer supplied capital, the Board recognized
19 also that receipt by shareholders of a price above book value would constitute an unfair
20 windfall.

21

22 3. To prevent such a windfall, the 2001 Order requiring payment to CVPS customers upon the
23 sale or acquisition of the company established a legal relationship between the shareholders
24 of CVPS (as a separate and distinct company) and its customers. This legal relationship
25 represented a contingent liability on the part of these shareholders to customers. The Order
26 did not impose any conditions on any successor entities to CVPS or the shareholders of that
27 entity - since such an entity did not exist at the time of the Order, could not have been
28 foreseen and might not be subject to the jurisdiction of the Vermont Public Service Board.

29

30 4. This contingent liability is triggered at the time of the sale, acquisition or merger of CVPS and
31 requires prompt payment by CVPS shareholders to ratepayers unless immediate payment
32 would impose serious financial harm on the company..

33

34 5. There is no provision for the assignment of this contingent liability to any other entity. CVPS
35 could not "transfer" the liability prior to merger to any affiliate without Board approval or to
36 any third-party. Similarly, CVPS cannot transfer the liability at the time of the merger to any
37 third-party, including the new company.

38

39 6. This contingent liability is a debt that has now come due. It is not some abstract pot of money
40 that has fallen from the heavens for CVPS and its successor companies to dispense as they
41 wish. It represents part (and only part) of the capital supplied by customers many years ago.

¹ Re: *Central Vermont Public Service Corp.*, 211 PUR 4th 53, 2001 WL 1002730 (Docket Nos. 6460, 6120, June 26, 2001).

1 Some of those customers have since died; others have gone out of business. Those customers
2 will never be repaid. Other customers have faced financial hardships every bit as grave as
3 those from which they rescued CVPS. Some face them still. Under CVPS's proposed handling
4 of this obligation, these circumstances will continue. They will continue not because the
5 merged entity needs the money but because the merged entity has chosen a repayment
6 method that will maximize shareholder returns rather than meet customer needs.
7

8 7. The liability cannot be satisfied out of merger savings because those should go to the
9 customers in any case. Therefore, they cannot satisfy the obligation to repay part of the
10 money that the customers advanced to CVPS a decade ago.
11

12 8. The one circumstance that the Board recognized might justify spreading the repayment to
13 customers over an extended period of time was that it not create an undue financial strain on
14 the Company (211 PUR 4th 88). That circumstance does not exist.
15

16 9. The merger/acquisition must be evaluated on its own and by standards used by the Vermont
17 Public Service Board for the evaluation of all utility mergers. The Board spelled out these
18 standards in its 2007 review of the acquisition of Green Mountain Power by Gaz Metro. They
19 are:

20 " ...whether the surviving company (1) is technically competent, (2) financially sound,
21 (3) will act as a fair partner in business transactions with the citizens of Vermont, (4)
22 creates efficiencies that will benefit customers, and (5) will not cause impairment of or
23 obstruct competition in the energy markets as a result of the transaction. However,
24 we have also made clear that our analysis of these five considerations, as well as
25 specific factors that we may examine, is directed towards meeting the fundamental
26 requirements under the statutes: that an acquisition must promote the public good."²
27

28 These are the standards that any merger must meet to gain Board approval. The windfall
29 protection measure is of course above and beyond these, as the Board recognized when it
30 mandated that:

31 "... Any such procedure must ensure that the benefit provided to ratepayers is in
32 addition to (rather than a replacement for) other benefits appropriately assigned to
33 ratepayers at the time of the future sale, merger or acquisition. In other words, when
34 an event that triggers the windfall sharing mechanism occurs, the first step is to
35 determine what benefits ratepayers are otherwise entitled to as a result of the sale or
36 merger. Once this determination has been made, the windfall sharing mechanism will
37 apply to any remaining proceeds above book-value."³
38

39 10. The new utility will have its own set of books and financial records. These will include - on the
40 asset side - the net book value of CVPS at the time of the merger, as well as anticipated future

² *Re: Green Mountain Power et al.*, 256 P.U.R. 4th 66, 73, 2007 WL 981734 (Docket No. 7213, March 26, 2007).

³ *Re C.V.P.S.*, 211 P.U.R. 4th 88.

1 operating costs. These will encompass the new Rate Base for the new utility - and will form
2 part of the foundation on which the Public Service Board must make a determination as to
3 whether or not the merger is in the public interest.

4

5 11. Assuming that the Public Service Board approves the merger, the new utility will have to file
6 rates and tariffs, and the Public Service Board must find those rates just and reasonable.

7

8 12. In making its findings under items 8, 9 and 10 above, the Public Service Board will take into
9 consideration the public benefits created by the merger - e.g., corporate synergies, operating
10 efficiencies, etc. - and will make a determination as to how these are to be allocated as
11 between ratepayers and the company.

12

13

14 Our testimony will discuss these conclusions and recommendations, focusing on two distinct

15 time periods – (1) Pre-merger/acquisition, and (2) Post-merger/acquisition.

16

17

18 **Section III Pre-merger Conditions**

19

20 **Q. Please describe the origin and nature of the payment that is due to ratepayers as a**
21 **result of the merger and acquisition of CVPS.**

22 A. The starting points for this requirement are the Board's January 3, 2001 and February 20, 2001

23 decisions setting rates for Green Mountain Power Company. The Board's decisions as to unjust

24 enrichment from an acquisition premium, and the remedy, were unequivocal. In its January 3, 2001,

25 Order the Board wrote:

26 In its arguments supporting the imposition of a recapture mechanism, AARP has raised a
27 critical issue that is of great concern to us: the possibility that approval of the Third MOU
28 (which enables GMP to recover its HQ-VJO Con-tract costs) will lead to a financial windfall
29 for shareholders as the result of an acquisition offer or asset sale at substantially above
30 book value. Today's Order provides for GMP's customers to pay rates in excess of those that
31 they would under traditional cost-of-service rate-making. These higher rates are
32 necessitated by the risks to GMP's customers from the Company's dire financial situation, a
33 situation that has resulted from GMP's own management decisions.....Ratepayers are thus
34 providing, through additional rates, the funding for GMP to recover from a financial crisis

1 that is largely of its own making. In the future, with its financial viability far less strained and
2 the HQ-VJO Contract costs addressed, it is possible that GMP's present shareholders could
3 realize, through an asset sale or acquisition offer, a financial windfall. Such a windfall would
4 be unattainable but for the financial stability enabled by approval of the Third MOU--and
5 the unusual contribution that will be collected from GMP's customers.

6
7 To avoid such unjust enrichment, and in consideration of ratepayers who will pay higher
8 rates than are justified by routine rate-making procedures, we find it essential that the rates
9 approved today be accompanied by a mechanism by which ratepayers will share in the
10 above-book proceeds of any future sale or merger of the Company, or sale of its regulated
11 assets.⁴

12
13 Thus, due to the Company's financial difficulties, and accordingly to provide a margin of
14 comfort for GMP's financial viability, we have consciously chosen a value from the lower
15 limit of the reasonable range of possible amounts to be shared⁵.

16
17 In its February 20, 2011, Order the Board wrote:

18
19 To accomplish this purpose, it is necessary for the benefits provided by the windfall sharing
20 mechanism to be *in addition to* any other benefits to which ratepayers are entitled. We
21 explicitly made this point in Footnote 359 of the Order which states:

22
23 Any such procedure [for windfall sharing] must ensure that the benefit provided to
24 ratepayers is in addition to (rather than a replacement for) other benefits
25 appropriately assigned to ratepayers at the time of the future sale, merger or
26 acquisition.

27
28 In other words, when an event that triggers the windfall sharing mechanism occurs, the first
29 step is to determine what benefits ratepayers are otherwise entitled to as the result of the
30 sale or merger. Once this determination has been made, the windfall sharing mechanism
31 will apply to any remaining proceeds above book-value.⁶

32
33
34 As the Public Service Board recognized in its June 26, 2001 Order in the CVPS case, Docket Nos.

35 6460 and 6120, these concerns were no less applicable to the rate increase that it was granting to

⁴ *Re: Green Mountain Power*, 207 PUR 4th 1, 56-57, 2001 WL 303906 (Docket No. 6107, January 3, 2001).

⁵ 207 PUR 4th 59.

⁶ *Re: Green Mountain Power*, 207 PUR 4th 167, 2001 WL 303929 (Docket No. 6107, February 20, 2001).

1 CVPS. See 211 PUR 4th, pp. 85-89. It explicitly adopted the “same” windfall sharing mechanism. See
2 211 PUR 4th at page 88. In the Order, the Board described the settlement it was approving as follows:

3 As a result of CVPS's imprudent early lock-in to the HQ-VJO Contract and the resulting large
4 potential disallowances, the Company's financial viability now requires the collection of
5 revenues higher than those calculated by routine rate-setting methodologies. This
6 additional funding from ratepayers will likely enable CVPS to maintain its financial viability,
7 creating the prospect that CVPS's shareholders could realize, through an asset sale or
8 acquisition offer, a financial windfall. Such a windfall would be unattainable but for the
9 financial stability enabled by approval of the MOU - and the unusual contribution that will
10 be collected from CVPS's customers. Therefore, in this Order, we condition our acceptance
11 of the MOU on the establishment of a mechanism to protect against the unjust enrichment
12 of CVPS's shareholders at the expense of CVPS's ratepayers⁷.
13

14 The PSB described the \$16 million windfall protection amount as “proportionate” to the \$8
15 million amount in the GMP decision⁸, so its description of the GMP amount as “a value from
16 the lower limit of the reasonable range of possible amounts to be shared” is equally
17 applicable to the CVPS \$16 million windfall protection amount.

18 Likewise, the Board noted firmly

19 We emphasize, however, that ‘Any such procedure [for windfall sharing] must ensure that
20 the benefit provided to ratepayers is in addition to (rather than a replacement for) other
21 benefits appropriately assigned to ratepayers at the time of the future sale, merger or
22 acquisition.’ In other words, when an event that triggers the windfall sharing mechanism
23 occurs, the first step is to determine what benefits ratepayers are otherwise entitled to as
24 the result of the sale or merger. Once this determination has been made, the windfall
25 sharing mechanism will apply to any remaining proceeds above book-value⁹.
26
27

28 **Q. Please explain why this payment obligation is a liability of CVPS current shareholders.**

⁷ 211 PUR 4th p. 85.

⁸ 211 PUR 4th p. 83 and fn 183.

⁹ 211 PUR 4th p.88.

1 A. The sharing mechanism was established by the Board to prevent unjust enrichment by
2 the shareholders of CVPS at the expense of its ratepayers. This follows from the fact that it
3 was the shareholders of CVPS that benefited from the rate relief provided by the Board in its
4 Order and paid for by CVPS ratepayers. The threat of bankruptcy hanging over CVPS at the
5 time of the Order was a direct threat to the value of CVPS shareholder equity. By granting the
6 rate increase to cover the Company's imprudently incurred costs, the Board preserved the
7 value of shareholder equity and, as it turns out, enabled shareholders to secure a buyer at a
8 premium above the book value of those shares.

9 This decision conveyed immediate as well as long-term benefits on CVPS shareholders.
10 The price of CVPS common stock nearly doubled almost immediately and rose further
11 thereafter. On the day following the announcement of the present merger, the value of a
12 share of CVPS stock rose by nearly 50%, to an amount more than three times what it was
13 when the PSB made its 2001 rulings. A trebling in value of an electric utility stock within a
14 decade, like a 50% overnight jump, is extraordinary indeed. It is exactly the type of windfall
15 that the PSB wanted to be sure was promptly shared with customers. Furthermore, utilities around
16 the country and their national trade association foreswore any entitlement to such windfalls when
17 seeking assurance that they would be protected from catastrophic losses during the debates over
18 electric restructuring in the 1990s. Instead, they asserted that they were entitled to receive no more
19 than the cost of capital determined by regulators and should therefore be protected from catastrophic
20 loss. This arrangement was called "the regulatory compact".

1 The balancing of the equities as between CVPS shareholders and its ratepayers requires that the
2 dollars necessitated by the sharing mechanism be paid to ratepayers promptly and from the windfall
3 that will soon benefit those shareholders. CVPS customers have already waited ten years for any
4 return of the extraordinary advance that they made to assist the shareholders through difficult times.
5 Now, these same shareholders are about to pocket the acquisition premium and go out of existence
6 as a distinct corporate entity. Customers will have no further access to the sum that the PSB has
7 already recognized to be “unjust enrichment”. Their clear claim needs to be honored now.

8

9 **Q. Can CVPS shareholders transfer this obligation to another entity?**

10 A. No. The obligation remains with CVPS shareholders. CVPS could not, and now cannot, “sell”
11 this obligation to any third-party. Were it able to do so, it could have established an under-capitalized
12 affiliate, transferred the obligation and allowed the affiliate to seek bankruptcy protections and
13 effectively terminate the obligation. Or, as the Board discussed in its Order, the company could
14 undertake a “two-step” process in which it first transferred assets to unregulated affiliates, then had
15 these unregulated affiliates dispose of these transferred assets in such a way so as to avoid triggering
16 the obligation to ratepayers.¹⁰

17

18 **Q. Please explain what triggers the payment of this CVPS shareholder liability to CVPS ratepayers.**

19 A. The Board’s Order is very clear on this point. In the GMP Docket 6107, the Board stated, “The
20 windfall sharing mechanism shall be triggered by any of the following; (1) any merger of GMP with
21 another company; (2) any acquisition of control of GMP that requires Board approval under 30 V.S.A.

¹⁰ 211 PUR 4th 86.

1 Section 107; and (3) the sale or lease of any of GMP's assets so substantial as to require Board
2 approval under 30 V.S.A. Section 109."¹¹ The Board carried this same triggering standard forward in
3 its CVPS Order¹². It is beyond doubt that the proposal of the petitioner in this case, if approved by the
4 Board, will trigger the application of the windfall sharing mechanism.

5

6 **Q. Is it your opinion that this CVPS liability must be discharged at the time of the merger and**
7 **acquisition? If so, please explain why.**

8 A. First, it is important to understand that Vermont customers, like those throughout New England
9 have long paid rates above the national average. When the New England Governors' Conference (as it
10 then was) undertook an inquiry into the reasons for this disparity, the resulting study concluded that
11 the reasons included the region's inefficient division into many small utilities serving an area smaller
12 than the service territory of one or two companies elsewhere in the country.¹³ In short, the merger is
13 not some new found benefit that the merging utilities are conveying on their customers. Instead, it
14 remedies an inefficiency that Vermont customers have been supporting for decades, the kind of
15 inefficiency that would long since have been exposed and remedied in a functioning competitive
16 marketplace but which regulators are powerless to correct in the world of monopoly utilities.

¹¹ 207 PUR 4th 58.

¹² 211 PUR 4th 85.

¹³ Other causes included distance from fuel sources, relatively high property taxes and the absence of any significant public power presence in the region. New England Regional Commission, "A Study of the Electric Power Situation in New England" (1970). See also William Shipman, "An Inquiry into the High Cost of Electricity in New England" (1962).

1 As a further illustration of the inefficiency that Vermont customers have supported for many
2 years, one study ranked GMP 79th and CVPS 84th (out of 94) in a review of relative efficiency.¹⁴ This
3 study notes that differences in the size of the utilities studied are a significant variable in explaining
4 differences in efficiency. It noted also that the companies at the bottom of the efficiency rankings
5 charge rates on the order of twice as high as the most efficient companies. In short, CVPS customers
6 (like those of GMP), have for decades paid a high price penalty for the privilege of being served by
7 utilities too small to avail themselves of economies of scale available elsewhere in the industry. The
8 beneficiaries of this penalty have been the shareholders and the executives of the two utilities.

9 The Board allowed two options for the repayment to ratepayers under the windfall sharing
10 mechanism. Payments to ratepayers could be made either immediately upon the event of a triggering
11 occurrence or extended over a period of time. However, the Board was very clear – the extension of
12 the payment period is an option only if a one-time payment at the time of the triggering event would
13 create an “undue financial strain on the Company.”¹⁵ There is no evidence that the one-time payment
14 of \$16 million adjusted for inflation made upon consummation of the merger/acquisition would create
15 any undue financial strain on the new company. Accordingly, the Order requires the one-time
16 payment.

17 The one-time payment to customers is also the only approach that is consistent with the nature
18 of the obligation. The shareholders will receive the acquisition premium windfall as a onetime
19 payment at the time that the acquisition takes place. They have an obligation to their customers, who
20 have foregone their own use of the money that they long ago advanced to CVPS to keep it out of

¹⁴ Haeri, et.al., “Competitive Efficiency: Do Mergers and ‘Critical Mass’ Really Make a Difference,”
Public Utilities Fortnightly, June 15, 1997, p. 26.

¹⁵ 211 PUR 4th 88.

1 bankruptcy. Paying their debt to their customers cannot possibly undermine the purposes for which
2 the extraordinary ratemaking treatment was undertaken in the first place.

3 This is an important provision in the Order. The Board imposed the windfall sharing obligation
4 on CVPS's existing shareholders and prohibited its pass-through or transfer to any acquiring company,
5 except where the immediate triggering of the obligation would cause or contribute to a financial crisis
6 for CVPS or any successor. Absent such a showing by the Company, the obligation remains where
7 equity considerations require it to be – on CVPS and its shareholders, and such obligation must be
8 discharged immediately upon the merger/acquisition.

9

10 **Q. Should the Board accept CVPS's apparent claim that the windfall protection provision will be**
11 **satisfied as a result of the savings brought about by the merger?**

12 A. Absolutely not. First, this approach violates the Board's clear statement that the windfall
13 protection payment is in addition to the amounts due to customers as a result of normal application of
14 merger policy.

15 Second, the savings to be achieved through this merger reflect structural inefficiencies in the
16 Vermont electric power industry that could have been eliminated decades ago. Instead, customers
17 have been paying the higher costs of supporting two small companies for all of these years.
18 Elementary fairness requires that the savings – now that they are finally being achieved – be precisely
19 calculated and flowed through to the customers promptly and independently of the provision against
20 unjust enrichment. These savings are but a small part of the amount that customers have overpaid
21 during the years that the managements of these two companies chose not to merge. They cannot be
22 used to offset a completely separate obligation.

1 Not only is the use of merger savings to pay off the windfall obligation wrong in principle, but,
2 such an approach will only pay off customers over time. The customers have already waited ten years,
3 and the windfall will occur immediately upon merger completion. Finally, there is no certainty that
4 forecasted savings of any particular quantity will actually occur. The customers are entitled to prompt
5 and certain repayment of a specific debt.

6 If the capital so desperately needed by CVPS in 2001 to avoid the consequences of its proven
7 imprudence had come from a bank rather than from customers, that bank would laugh CVPS out of
8 the room when it proposed to repay its contingent liability using other money that it owed to the bank
9 as a result of other transactions. The Vermont Public Service Board, having been compelled to put
10 CVPS customers in place of that hypothetical financial institution, should do no less in safeguarding
11 the customer interest that it created in 2001.

12 **Q. Did the Board impose any constraints on the application of the unjust enrichment sharing**
13 **mechanism in its Order?**

14 A. Yes. The Board was very concerned about the Company's ability to retain an investment grade
15 rating so that it would be able to access capital markets on reasonable terms both before and after
16 any merger or acquisition. This concern led the Board to reject certain proposed sharing mechanisms
17 tied, for example, to upward movements in the Company's stock price prior to any merger or
18 acquisition as well as AARP's recommended sharing level of \$65 million.

19 Similarly, the Board stated that it would constrain the implementation of the sharing mechanism
20 if the Company "... makes a compelling showing that to do so [implement the sharing mechanism]
21 would precipitate, or contribute to, a financial crisis for the Company or any successor."¹⁶ Not

¹⁶ 211 PUR 4th 88.

1 surprisingly, there has been no showing by the Company that this constraint should be implemented.
2 In fact, the situation is quite the opposite. The acquiring entity is paying CVPS's existing shareholders
3 a significant premium above the book value of their shares. From the acquiring entity's perspective it
4 is of little matter whether the entire acquisition premium it is paying is paid to CVPS's existing
5 shareholders or whether a portion of that premium is paid to CVPS ratepayers. The new company's
6 financial condition is not impacted by the names on the acquisition premium checks.

7

8 **Q. Have you computed how much the windfall sharing premium amount should be?**

9 A. Yes. This calculation is shown on Table 1 of Exhibit PB/RS-2. The table shows the values of the
10 Consumer Price Index for All Urban Consumers and for Northeast Urban Consumers in July 2001, the
11 month after the Order was issued, and November 2011, the last month for which these values are
12 available from the U.S. Department of Labor. The Order is not explicit in that it only states that the
13 \$16 million cap should be adjusted for inflation. Our belief is that, where there may be ambiguity, the
14 ambiguity should be resolved to reflect the intent of the Board, which in this case is an adjustment for
15 inflation as experienced by CVPS ratepayers. The closest CPI adjustment to this standard is the
16 Northeast Urban Consumers CPI, which results in a windfall sharing amount of \$20,985,946.¹⁷

17

18 **Q. Do you have any opinions about how this money should be returned to CVPS ratepayers?**

19 A. Yes. We believe that the money should be returned to CVPS ratepayers at the same time that
20 CVPS shareholders receive their compensation. We have shown how the amounts should be

¹⁷ This amount will need to be further adjusted based on the amount of time it takes to resolve this case and for CVPS to implement the mechanism for returning the windfall sharing amount to its ratepayers.

1 calculated in Tables 2 and 3 of Exhibit PB/RS-2. Table 2 shows customer, energy and revenue
2 information taken from the CVPS 2010 Annual Report. Since the value that ratepayers provided CVPS
3 as a result of the 2001 Order was revenues, the windfall sharing amount should be returned to
4 ratepayers in proportion to the revenues they have paid to CVPS. This table shows that 49.6% of the
5 windfall sharing amount should be returned to residential ratepayers, 37.8% to commercial ratepayers
6 and 12.6% to industrial and other ratepayers.

7 Table 3 shows the total amounts to be returned to each ratepayer type and the amount per
8 kWh, based on the average of such values for 2008, 2009 and 2010. This shows that residential
9 ratepayers should receive \$0.01060 per kWh, commercial ratepayers \$0.00937 per kWh and industrial
10 and other ratepayers \$0.00688 per kWh, assuming the windfall is refunded to ratepayers on the basis
11 of energy usage over a 12-month period. The final set of information in Table 3 shows the average
12 refund amount per ratepayer of each ratepayer type. These amounts are \$76.37, \$352.05 and
13 \$12,552.01 for residential, commercial and industrial and other ratepayer types, respectfully.

14

15 **Q. Please explain how you recommend the refund be computed for each ratepayer and**
16 **implemented?**

17 A. We recommend that CVPS calculate a refund amount for each of its customers of record during
18 2011. This amount should be calculated as the dollar amount per kWh, computed as per Exhibit
19 PB/RS-2 updated for the correct inflation adjusted amounts and for ratepayer usage levels, multiplied
20 by the actual usage level (in kWhs) for that ratepayer during 2011. The refunds should be issued by
21 check and mailed to the billing or service address of each ratepayer on or about the same time that

1 CVPS shareholders are paid for their shares. Any refunds that are returned to the Company should be
2 placed in a special account, forwarded to the new company and reported to the Board.

3

4 **Q. Isn't this an inefficient way to distribute the refund amounts, and would not a more efficient**
5 **means of doing this be through an on-bill credit for each ratepayer?**

6 A. We believe that it is important for CVPS ratepayers to be treated in a manner that is consistent
7 with the extraordinary actions demanded of them in providing a life-line to CVPS during its time of
8 need and with the Board's Order. Ratepayers stepped up and provided dollars to CVPS to preserve
9 the Company. While these dollars were in the form of a rate increase and not a debt instrument or
10 shares of common stock, they were every much identical in impact if not in form as debt or equity
11 would have been. Our understanding is that debt and equity holders are being cashed out upon the
12 consummation of the merger/acquisition and so should ratepayers be.

13 Further, the payment of the windfall sharing amount in cash to each ratepayers is a clear
14 demonstration by the Board to preserve the faith of ratepayers and the distinctive nature of the
15 commitments made by all parties. This has importance well beyond the scope of this case and will, we
16 believe, go a long way toward enhancing the trust ratepayers will have in the Board, as an institution
17 of government. The Board should resist any urging that it roll the windfall sharing amount of
18 approximately \$21 million forward onto the books of the new company as a "regulatory liability" to be
19 amortized over a number of years, to be blended with other costs and revenues under some form of
20 incentive rate scheme or to be dedicated to the fulfillment of some other socially beneficial purpose.
21 This would render the obligation that CVPS shareholders have to their ratepayers completely obscure
22 to all but forensic accountants and in the process destroy any sense that ratepayers will receive any

1 repayment of their past financial commitment to CVPS. While no plan can achieve complete accuracy
2 in returning the adjustment to the customers who provided the original rescue, allocation to pet
3 projects is less likely to achieve fairness in this regard than direct repayment. This will damage the
4 confidence that ratepayers have in the Board.

5

6

7 **Section IV Post-Merger/Acquisition Conditions**

8

9 **Q. Once the merger/acquisition of CVPS is complete, how will the successor company to CVPS be**
10 **regulated?**

11 A. The successor company will be a Vermont public utility regulated by the Vermont Public Service
12 Board pursuant to all existing state statutes and Board rules and regulations. The merger/acquisition
13 filing does not include a new, proposed set of rates and tariffs, so absent any conditions imposed by
14 the Board, the new company will operate off the current CVPS rates when it commences operations.

15

16 **Q. How will merger/acquisition benefits be provided to CVPS ratepayers if rates are going to**
17 **remain the same?**

18 A. There are a number of ways in which merger/acquisition benefits can accrue to CVPS
19 ratepayers. The typical way in which this happens is that the Board imposes conditions on the
20 merger/acquisition, some of which relate directly to a reduction in the revenue requirements of the
21 new company going forward. The Board also imposes a requirement that the new company make a
22 compliance filing with the Board that incorporates these conditions. This compliance filing often
23 includes across-the-board reductions in rates, unless the Board identifies specific rate elements that

1 should be changed. Once that compliance filing is accepted by the Board, the lower rates are
2 implemented, and CVPS ratepayers begin realizing the merger/acquisition benefits.

3 A second option is for the new company to file new revenue requirements and rates based on
4 its new cost structure immediately (or very shortly thereafter) upon consummation of the
5 merger/acquisition. This filing could be in lieu of the compliance filing or it could be made subsequent
6 to a compliance filing. These new revenue requirements should incorporate all of the
7 merger/acquisition financial benefits. The result of this filing and a subsequent order by the Board
8 accepting or modifying the filing will be a new post-merger set of rates that are based on the new
9 company's costs of providing service to its customers.

10

11 **Q. Does the cost structure of the new company include the payment of the windfall sharing**
12 **mechanism?**

13 A. No. This is an obligation of CVPS and its shareholders. It does not carry through the
14 merger/acquisition to become an obligation of the new company.

15

16 **Q. Does the cost structure of the new company include the acquisition premium amount?**

17 A. No, it should not. This is a long-standing principal of ratemaking. Were the acquisition premium
18 to become a part of the new company's revenue requirements, the book value of the new company
19 would be artificially inflated, causing rates to increase simply as a result of the merger/acquisition. In
20 the 1920s, regulated utilities took advantage of such ratemaking naivete by selling the companies back
21 and forth, and in the process, realizing unfair returns for their shareholders. As James Bonbright
22 noted many years ago, "The unfairness, not to say the absurdity of a uniform rule permitting a

1 transferee of a utility plant to claim his purchase price as a measure of ratemaking investment was
2 noted by Judge Learned Hand.....

3 The builder who does not sell is confined for his base to his original cost; he who sells
4 can assure the buyer that he may use as a base whatever he pays in good faith. If the
5 builder can persuade the buyer to pay more than the original cost, the difference
6 becomes part of the base and the public must pay rates computed upon the excess.
7 Surely that is a most undesirable distinction. (*Niagara Falls Power Co. v. Federal*
8 *Power Commission*, (137 F. 2d 787, 1943, p. 793).¹⁸
9

10

11 **Q. Is it appropriate for the Board to use merger/acquisition benefits to offset the CVPS obligation**
12 **to pay the windfall sharing amount to its ratepayers?**

13 A. Absolutely not.

14 The argument that the merger/acquisition provides ratepayer benefits and that these benefits offset
15 CVPS obligations to its ratepayers is akin to Chrysler arguing that it has created jobs and therefore does
16 not have to pay back the money it borrowed from the federal government to bail it out of its difficult
17 financial situation. As was stated many times, the purpose of the loans to Chrysler and other corporations
18 by the U.S. government was to ensure the financial viability of these companies so that they could
19 continue to provide jobs and economic opportunities for our country. The fact that Chrysler has, to date,
20 been successful in meeting this objective in no way relieves it of its obligation to pay back the borrowed
21 money.

22 Yet, this is what CVPS is arguing. The rate increase imposed on its ratepayers to preserve CVPS as a
23 viable corporation in its time of greatest financial stress was made to ensure that CVPS would continue to
24 provide reliable service at just and reasonable rates. The fact that it has done just that over the past
25 decade in no way relieves it of its obligations to pay to its ratepayers the full amount required under the

¹⁸ Bonbright et al, Principles of Public Utility Rates, (Public Utility Reports, Inc, 1988), pp. 240-41.

1 windfall sharing mechanism. The obligation of the merged entity to provide service at the lowest
2 reasonable cost exists with or without the provision against unjust enrichment. The customers are
3 entitled to expect no less and should not have to pay extra for it by using the savings to offset the
4 provision against unjust enrichment.

5

6 **Q. Does this conclude your testimony?**

7 A. Yes.

8

List of Exhibits

- | | | |
|---------|--------------------------------------|------------------------------------------|
| PB/RS-1 | Brief Resume for | Dr. Richard Silkman
Peter A. Bradford |
| PB/RS-2 | Windfall Sharing Amounts and Refunds | |

DR. RICHARD H. SILKMAN
Curriculum Vitae

PERSONAL:

Born: May 21, 1951; married, three children

EDUCATION:

Purdue University, B.S. (w/ Distinction), Economics, 1972
Yale University, M.A. Economics, 1975
Yale University, Ph.D. Economics, 1980

SELECTED RECENT EXPERIENCE:

Partner -	Competitive Energy Services, LLC	Present
	148 Middle Street	
	Portland, Maine 04101	
	Phone (207) 772-6190	
	Fax (207) 772-6320	

Competitive Energy Services, LLC (CES) is the largest energy aggregation company in Maine and one of the largest in the northeast. Through broker agreements with more than a dozen of the largest retail energy suppliers in the country, CES is currently providing energy brokerage services to over 5,000 commercial and industrial accounts in the northeast, with a total annual energy spend of close to \$1 billion.

Partner -	Kennebec Valley Gas Company, LLC	Present
	148 Middle Street	
	Portland, Maine 04101	
	Phone (207) 772-6190	
	Fax (207) 772-6320	

Dr. Silkman is a partner in GridSolar, LLC, a Maine-based company established to develop a 60 mile (intrastate) high pressure natural gas pipeline and local distribution facilities to serve customers in the Kennebec River Valley in central Maine, including the Towns of Gardiner, Farmingdale, Hallowell, Augusta, Waterville, Fairfield, Oakland, Skowhegan, Norridgewock and Madison. Kennebec Valley Gas Company has received a conditional approval for a Certificate of Public Convenience and Necessity to become a natural gas public utility for this purpose.

Partner - GridSolar, LLC Present
 148 Middle Street
 Portland, Maine 04101
 Phone (207) 772-6190
 Fax (207) 772-6320

Dr. Silkman is a partner in GridSolar, LLC, a Maine-based company established to pursue Non-Transmission Alternatives to major transmission upgrades in response to grid reliability concerns.

Partner - Beaver Ridge Wind, LLC Present
 148 Middle Street
 Portland, Maine 04101
 Phone (207) 772-6190
 Fax (207) 772-6320

Dr. Silkman is a partner in MIRSAPI, which is a member in Beaver Ridge Wind, LLC, the developer, owner and operator of a 4.5 MW wind generation project located in Freedom, Maine. This project began commercial operations on November 1, 2008. It was the second commercial grade wind generation project developed in the Maine and remains the only such project in the CMP service territory. Total project costs were in excess of \$12 million.

Owner - Richard Silkman Associates 1992 – Present
 15 King Street
 Scarborough, ME 04074

Richard Silkman Associates is a consulting firm established by Richard Silkman in 1992, specializing in economic regulation, energy and telecommunications and in economic impact analyses. Dr. Silkman is a nationally recognized expert in the regulation of public utilities and energy policy. He has appeared as an expert witness before public utility commissions and a number of legislative bodies. Silkman Associates currently provides energy consulting services to a variety of large energy users on matters related to electric utility deregulation and is actively involved in the negotiation of special tariffs and contracts at the wholesale and retail levels for electricity and natural gas for a wide range of industrial and commercial clients throughout the Northeast and Mid-Atlantic states. Silkman Associates has also provided consulting services to private companies and public authorities and agencies to perform economic impact analyses of products, investment activities and various public policies.

Director Maine State Planning Office 1987 – 1992

Dr. Silkman was appointed by Governor John R. McKernan, Jr. to direct the Maine State Planning Office, a cabinet-level office with a staff of approximately forty (40). In this capacity, Dr. Silkman served as the chief policy advisor to the Governor on matters related to economic policy, energy, hydropower and river management policy, telecommunications regulation, state tax policy, health care regulation and cost-containment and land-use and natural resources policy. During his tenure as Director, Silkman chaired a number of commissions and task forces including the Land for Maine's Future Board, the Land and Water Resources Council, the Gulf of Maine Council on the Marine Environment and the Governor's Tax Policy Committee, and was a member of the Board of Directors of the Maine Development Foundation, Maine Science and Technology Commission and Maine World Trade Association.

Dr. Silkman also was very much involved in national organizations during his term in state government. He served on the Board of Directors and as President of the Council of Governors' Policy Advisors (CGPA), an affiliate of the National Governors Association. CGPA is a professional association of senior policy advisors to the nation's governors, with approximately 200 members from the 50 states and territories. In addition, Dr. Silkman chaired or co-chaired staff advisory committees of the National Governors' Association in Telecommunications, Health Care and Human Resources.

University Appointments

1978 - 1987

Dr. Silkman was on the faculty of the State University of New York at Stony Brook and subsequently of the University of Southern Maine, where he served as Acting Director of the Public Policy and Management Program. During his tenure at both institutions, Dr. Silkman taught courses in applied economics, statistics, economic regulation and policy analysis, and served as a consultant to a number of private companies and public sector agencies.

SELECTED PROJECTS AND CONSULTING ENGAGEMENTS OF DR. SILKMAN AND COMPETITIVE ENERGY SERVICES, LLC:

Dr. Silkman was retained by Smurfit-Stone to manage the sale of its Bathurst, New Brunswick mill facilities, including a 10.8 MW hydroelectric generating plant interconnected to the New Brunswick transmission grid through the Bathurst Mill.

Dr. Silkman was retained by NewPage Corporation to manage the sale of its 40 MW hydroelectric generating station in Rumford, Maine.

Dr. Silkman was retained by the Town of Wiscasset in Maine to assist the Town in developing estimates of the economic value of the former Maine Yankee nuclear plant site as

an interim storage facility for spent nuclear fuel. This work is being done in the context of developing a value of the property for property taxation purposes.

Dr. Silkman was retained by the Town of Rockingham in Vermont to assist the Town in its efforts to become a municipal electric utility and to acquire the Bellows Falls Hydro Electric generation station (approximately 48 MW) located within the Town. As a part of this effort, Dr. Silkman served as the lead witness for the Town of Rockingham in litigation with the owner of the Bellows Falls Hydro plant over the assessed valuation of that plant and in the bankruptcy proceeding involving U.S. Generation – New England in the Baltimore circuit.

Dr. Silkman provided testimony before the Vermont Public Service Board on behalf of the AARP on matters related to the treatment of stranded cost and the reasonableness of rates for Green Mountain Power.

Dr. Silkman served as an economic consultant to TransEnergie U.S. on a project to examine the technical and economic feasibility of constructing a transmission line to interconnect northern Maine (Maine Public Service Company) directly to the New England transmission grid. This project is being supported through funds appropriated by Maine Legislature this specifically for this purpose.

Dr. Silkman was retained during 1999 and 2000 by the New Hampshire Legislature to provide expert consulting services and advice regarding the proposed Settlement Agreement between PSNH and the Governor's Office.

Dr. Silkman has provided testimony before that Pennsylvania Public Utilities Commission on behalf of a coalition of State Senators in Pennsylvania related to a general proceeding involving interconnection and competitive issues in telecommunications and the proposed merger of Bell Atlantic and GTE. This is an ongoing project, which is currently focused on the manner with which Bell Atlantic will implement a PUC ordered structural separation of its retail and wholesale functions in the local exchange market.

Dr. Silkman provided testimony to the California Public Utilities Commission on behalf of the California Office of Ratepayer Advocacy (through a subcontract with Economics and Technology, Inc.) in the 1998 PG&E rate case. This testimony utilized a mathematical technique called Date Envelopment Analysis (DEA) to evaluate the efficiency with which electric transmission and distribution utilities provide electric service to their customers.

Dr. Silkman was retained by Cablevision Systems to assist it in its efforts and cases filed at the Massachusetts Department of Telecommunications and Energy to ensure that electricity

restructuring in Massachusetts results in competitive markets and fair and commercially reasonable relationships between regulated utilities and unregulated subsidiaries and affiliates.

Dr. Silkman has been and continues to be retained by Champion International (now International Paper) to provide economic consulting services related to the development of a 175 MW "within the fence" natural gas-fired cogeneration project at its Bucksport, Maine mill. In this capacity, Dr. Silkman negotiated a 15-year Purchased Power Agreement with H.Q. (U.S.) and a complementary natural gas supply agreement involving the Maritimes & Northeast Pipeline from Sable Gas Project. In addition, Dr. Silkman worked closely with Champion during dispute resolution with NEPOOL regarding the development of an interconnection protocol and agreement for this facility, filed testimony at FERC in support of Champion's efforts to obtain NEPOOL Section 18.4 approval for interconnection, and continues to advise Champion in its through its efforts to secure a final interconnection agreement with CMP and NEPOOL.

Dr. Silkman was retained by the Philadelphia City Council to assist it in understanding and evaluating the impacts of natural gas deregulation on its municipal gas company and on its citizens and businesses.

Dr. Silkman was retained by a consortium of consumer groups to provide expert advice and testimony regarding PECO Energy's efforts to secure Pennsylvania Public Utilities Commission approval to securitize \$3.6 billion of stranded costs and of its comprehensive restructuring plan. In this capacity, Dr. Silkman led the negotiating team that developed a settlement proposal of most of the major issues associated with restructuring. This settlement, which has subsequently been rejected by the Pennsylvania Public Utilities Commission, included a write-off of \$2 billion of stranded costs by PECO and guaranteed rate reductions of 10% for ratepayers.

Dr. Silkman has served as the external project manager for a comprehensive effort by Hannaford Bros., Fortune 500 grocery company to reduce its greater than \$30 million a year energy costs. This effort has included negotiating special rate contracts with electric utilities at rates well-below retail tariffs, negotiating natural gas supply and pricing contracts with gas marketers, securing more favorable gas transportation tariffs with local distribution companies and installing self-generation (natural gas engine-generators) at multiple retail locations in Maine and New Hampshire. These efforts have received national attention, leading to the Company's recognition as one of the 6 most savvy energy buyers in 1996 by a leading trade publication in the field.

Dr. Silkman has served and continues to serve as the lead economic consultant for the Industrial Energy Consumer Group, a consortium of large energy users in Maine. In this capacity, he has been involved with negotiating hundreds of millions of dollars of electricity supply contracts incorporating substantial rate reductions; in Maine regulatory proceedings where regulated electric utilities have been denied millions of dollars of rate increases; and in regulatory proceedings before the Federal Energy Regulatory Commission on matters related to the development of the rules and regulations governing the establishment of competitive electricity markets.

Dr. Silkman was retained by a governmental commission on Long Island, New York to perform an economic impact analysis of a system of "Transferable Development Rights" designed to protect an environmentally sensitive region in the northeast, while balancing the property interests of a variety of constituencies.

Dr. Silkman has performed an economic impact analysis of a major electric utility project seeking authority to switch fuels at one of its northeastern generating stations.

Dr. Silkman served as the lead economic consultant for NYNEX in Maine in its efforts to seek a redesign of its telephone rates to bring them more in line with costs. In this capacity, he performed an econometric analysis of demand elasticity for the Telephone Company and provided testimony on the economic theory of efficient rate design and the public benefits of investments to modernize the telecommunications network.

Dr. Silkman served as a consultant to a regional paper company and an expert witness in a successful action it filed with the regulatory commission challenging the reasonableness of its electric utility to provide service at higher voltage.

Dr. Silkman served as a consultant to a national consortium of telecommunication companies, managing the consortium's relationship with national organizations, including the National Governors' Association and the Council of Governors' Policy Advisors.

PETER A. BRADFORD
P.O. BOX 497
PERU, VERMONT 05152
(802) 824-4296

PROFESSIONAL EXPERIENCE:

March 1998 – present – Adjunct Professor, Vermont Law School

Teaching course on “Nuclear Power and Public Policy” and other classes; participating in VLS Energy Law Center programs

March 2011 – present – Commissioner, Texas-Vermont Low-Level Radioactive Waste Compact Commission,

One of two Vermont commissioners on this two-state compact

March 1996- present - consultant on energy and utility regulatory policy

Advising and teaching utility regulation, restructuring, nuclear power and energy policy in the U.S. and abroad. Has been a visiting lecturer in energy policy and environmental protection at Yale University. Served as a member and cochair on Vermont’s 2008-10 Public Oversight Panel on the Comprehensive Reliability Audit of the Vermont Yankee nuclear power plant; Served on a 2007 Keystone Center fact finding collaboration on nuclear power and a 2006 National Academy of Sciences panel evaluating the alternatives to continued operation of the Indian Point nuclear power plants in New York. Also affiliated with the Regulatory Assistance Project, which provides assistance to state and federal energy regulatory commissions regarding economic regulatory policy and environmental protection.

Has advised on regulatory and restructuring issues and has testified on aspects of electricity and telecommunications regulation in many U.S. states. In recent years (2007-present) has testified in proceedings in Indiana, Florida, North Carolina and South Carolina.

International - Taught and/or advised abroad on energy and water issues and electric restructuring in China, Canada, Armenia, Russia, India, Indonesia, Kazakhstan, Kyrgyzstan, Czech Republic, Mongolia, St. Lucia, Kosovo, South Africa, Georgia, Trinidad and Tobago and Samoa. Member, Policy Advisory Committee of the Packard Foundation’s China Sustainable Energy Project. Served as one of two U.S. representatives on international panel advising European Bank for Reconstruction & Development on least cost alternatives in Ukraine to continued operation of the Chernobyl Nuclear Station (1996-97) and on an international expert panel assessing the safety of the Mochovce Nuclear Power Station in Slovakia (1998);

February 1995 - March 1996 Fellow, **Regulatory Assistance Project**

*Project funded by the U.S. Dept. of Energy, the Environmental Protection Agency and foundations to provide assistance to state and federal regulatory commissions on energy and environmental matters.*⁸

June 1987- January 1995 Chairman, **New York State Public Service Commission**, Albany, New York

CEO of state agency charged with overseeing \$29 billion annual revenues of New York utilities. Responsible for developing and implementing consumer and environmental protection policies, transitions from monopoly to competition in energy and telecommunications industries. 700 employees, \$65 million budget.

July 1982- June 1987 Chairman, **Maine Public Utilities Commission**, Augusta, Maine

CEO of state agency charged with overseeing \$2 billion annual revenues of Maine utilities. Responsible for developing and implementing consumer and environmental protection policies, including competitive bidding for independent power production and energy conservation services as well as adjusting to the break-up of AT&T. 60 employees, \$4 million budget.

March 1982-June 1982 **State of Maine Public Advocate**

First full-time Maine public advocate; intervened on consumers' behalf in telephone and electric cases; oversaw staff of 6; prepared briefs; cross-examined witnesses.

Aug. 1977-March 1982 Commissioner, **United States Nuclear Regulatory Commission**, Washington, D.C.

One of five commissioners of the federal agency whose responsibilities include safety of nuclear power plants and other nuclear facilities; preparing licensing criteria for a nuclear waste repository; licensing exports of nuclear fuel and reactors pursuant to Nuclear Nonproliferation Act; assisted in major upgrades of regulatory and enforcement processes in wake of Three Mile Island accident. 3000 employees, \$250 million budget.

Dec. 1971-Aug. 1977 Commissioner, **Maine Public Utilities Commission**, *Chairman* (9/74-7/75).

Sept. 1968- Dec. 1971 **Federal-State Coordinator**, State of Maine

Responsible for many oil, power, environmental and housing matters. Assisted in preparation of landmark Maine laws relating to oil pollution and industrial site selection. Staff Director, Governor's Task Force on Energy, Heavy Industry and the Coast of Maine.

Aug. 1964-June 1965 **Athens College, Greece, Teaching Fellowship**

PROFESSIONAL AFFILIATIONS:

1999-present - Member, Policy Advisory Committee, China Sustainable Energy Project (funded by the David and Lucille Packard Foundation and the Energy Foundation).

1998-2002 - Member, Advisory Council, New England Independent System Operator

Nov. 1986-Nov. 1987 President, National Association of Regulatory Utility Commissioners

1977-1995 NARUC positions, Member, Executive Committee; Member, Electricity Committee (1977-1989); Member, Gas Committee (1989-1993); Member, Communications Committee (1975-1977); Board of Directors, National Regulatory Research Institute (1985-1987).

1975-1977, 1982-1986. Advisory Council, Electric Power Research Institute

1987-1995, Member of New York State Energy Planning Board

1987-1995, Member, Board of Directors, New York State Energy Research and Development Administration

1987-1995, Member, New York State Environmental Board;

1987-1995, Chair, New York State Energy Facilities Siting Board

1992-1994, State co-chair, New York State Task Force on Telecommunications Policy

Vice-chair, Board of Directors, Union of Concerned Scientists

EDUCATION:

1964 B.A. History, Yale University, New Haven, CT

1968 L.L.B., Yale University School of Law, New Haven, CT

PERSONAL:

Married (Susan Symmers Bradford)

Three children (Arthur, Laura, Emily)

PUBLICATIONS of Peter A. Bradford

Books

Fragile Structures: A Story of Oil Refineries, National Security and the Coast of Maine, 1975, Harpers Magazine Press.

Law Review

Maine's Oil Spill Legislation, Texas International Law Journal, Vol.7, No.1, Summer 1971, pp.29-43.

Other Published Work

"Taxpayer Funding for Nuclear Power: Issues and Consequences", Chapter 5 of Nuclear Power's Global Expansion: Weighing Its Risks, Henry Sokolski, ed.

<http://www.npolicy.org/userfiles/image/Taxpayer%20Financing%20for%20Nuclear%20Power,%20Precedents%20and%20Consequences.pdf.pdf>;

Book review, *The End of Energy*, The Wall Street Journal, May, 2011;

Remarks, Memorial for Alfred Kahn, Ithaca, New York, June 25, 2011 -

<http://www.hks.harvard.edu/hepg/Papers/2011/FredKahn0611.pdf>

Nuclear Power's Search for the Taxpayer's Wallet, Blue Ridge Press, November, 2010.

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Exhibit PB/RS-2 TABLE 1

Consumer Price Index (CPI-U - All Urban Consumers)			
	July-01	177.50	
	Nov-11	226.23	
CVPS Windfall Sharing Amount	July-01		\$16,000,000
CPI Adjusted Amount	Nov-11		\$20,392,563
Source: ftp://ftp.bls.gov/pub/special.requests/cpi/cpi.ai.txt			

Consumer Price Index (CPI-U - Northeast Urban Consumers)			
	July-01	185.00	
	Nov-11	242.65	
CVPS Windfall Sharing Amount	July-01		\$16,000,000
CPI Adjusted Amount	Nov-11		\$20,985,946
Source: http://data.bls.gov/timeseries/CUUR0100SA0?data_tool=XGtable			

Exhibit PB/RS-2
TABLE 2

	2008	2009	2010	3-Year Percent
Retail Sales - Revenues (\$000s)				
Residential	138,091	139,047	146,835	49.6%
Commercial	108,252	104,001	111,219	37.8%
Industrial and other	36,730	34,481	36,352	12.6%
Total Retail	283,073	277,529	294,406	
Resale Sales	48,641	54,279	37,957	
Provision for Rate Refund	(296)	(1,689)	(3,598)	
Other Operating Revenues	10,744	11,979	13,160	
	342,162	342,098	341,925	
Retail Energy (MWhs)				
Residential	982,966	981,838	979,922	44.4%
Commercial	873,192	825,010	843,156	38.3%
Industrial and other	403,053	370,914	378,074	17.4%
Total Retail	2,259,211	2,177,762	2,201,152	
Resale Sales	759,832	840,536	781,178	
	3,019,043	3,018,298	2,982,330	
Retail Customers (Number)				
Residential	136,074	136,242	136,457	85.7%
Commercial	22,407	22,577	22,672	14.2%
Industrial and other	210	211	210	0.1%
Total Retail	158,691	159,030	159,339	

Source: CVPS 2010 Annual Report, Page 37 of 128.

Exhibit PB/RS-2**TABLE 3**

Total Amount to be Refunded to Ratepayers		\$20,985,946
Amount by Retail Customer Type		
Residential	49.6%	\$10,406,306
Commercial	37.8%	\$7,939,535
Industrial and Other	12.6%	\$2,640,105
Amount of Credit per kWh		
Residential		\$0.01060
Commercial		\$0.00937
Industrial and Other		\$0.00688
Average Lump-sum Amount per Customer		
Residential		\$76.37
Commercial		\$352.05
Industrial and Other		\$12,552.01