



1 created by the current governance structure, and indeed, all of structures proposed in  
2 this Docket.

3 III. Many of the alleged theoretical negative consequences that could result from a  
4 change of VELCO governance are vastly overstated and alarmist, reflecting advocacy  
5 positions rather than reality.

6 IV. The stability and oversight created by the comprehensive regulatory  
7 environment in which VELCO operates allows for and should encourage a wider  
8 representation of interests on the VELCO Board rather than the opposite.

9 V. Flexibility should be a guiding principle in fixing a VELCO Board structure  
10 that will serve Vermont's distribution utilities and their ratepayers for the long term.

11  
12 **Q3. Would you like to take each point in turn?**

13 **A3.** Yes, thank you.

14 **I. *If one accepts that proportionality of ownership or investment is relevant***  
15 **to the corporate governance structure of VELCO, it is the respective ownership**  
16 **of VT Transco upon which VELCO Board representation should be based.**

17  
18 As I explained on Pages 7-9 of my prefiled testimony, virtually all of  
19 Vermont's transmission assets are owned by VT Transco. As the PSB is well aware,  
20 VT Transco, LLC was created pursuant to an Order in Docket No. 7174 (June 20,  
21 2006) to achieve tax benefits which would be passed on to customers and reduce rates,  
22 to the tune of \$637,000 in 2006 when the Order was issued. By transferring

1 transmission assets to a limited liability company VELCO's earnings, which then  
2 became VT Transco's earnings, could be passed through to members and would not be  
3 subject to "double taxation" at both the corporate and individual owner levels. The  
4 result of this double-corporate structure is that VT Transco owns the transmission  
5 assets but does not have a Board of Directors and VELCO has a Board of Directors but  
6 does not own the transmission assets. Only the investor-owned utilities benefit from  
7 this two-company structure.

8 While SED has essentially put forward a cooperative model for VELCO  
9 governance (one vote per utility), many other parties have cited "proportionality" as a  
10 bedrock principle of corporate governance. For example, Christopher Dutton, on  
11 behalf of VELCO, states that "[t]he proportionality principle has always been a  
12 cornerstone of VELCO's governance...and new shares in the company are offered to  
13 those owners based in rough proportion to each owner's share of Vermont's retail  
14 electric load, or since 2010, on their share of transmission costs." (Dutton pf. at 20.)  
15 Mr. Dutton also indicates in an interrogatory response that larger owners of VELCO  
16 "have made larger investments and have more capital at risk," justifying their inclusion  
17 in Board-level governance. (Response to SED:VELCO.1-1.) As discussed above and  
18 in my prefiled testimony, this is simply not the case. It is the respective ownership of  
19 VT Transco, not VELCO, which represents the proportionate share of transmission  
20 costs and the investment of each utility in the grid.

1 I find that Professor Dworkin summed this up well when he noted that “Most  
2 indicia of ownership, such as the right to earn a return on investment, lie with Transco  
3 and ownership in Transco is essentially proportionate to the investments made by each  
4 Vermont utility.” (Dworkin pf. at 12.) If proportionality is deemed relevant in  
5 arriving at a new structure for the VELCO Board (which, again, I dispute), the dual-  
6 company structure that only exists for tax purposes should not to be permitted to  
7 distort the actual investment of each utility in the grid. It may seem odd that  
8 ownership in one company should dictate the governance structure of another, but  
9 given the relationship between VELCO and VT Transco it is required in this instance.

10  
11 **II. It is a mistake to rely too heavily on the fiduciary duties imposed on**  
12 **VELCO’s Directors to protect the rights of minority owners given the inherent**  
13 **role conflicts created by the current governance structure, and all of the**  
14 **governance structures proposed in this Docket.**  
15

16 Numerous parties have referenced or commented on the fiduciary duties of care  
17 and loyalty, and some have opined that because such duties exist, any fears of self-  
18 dealing or bias by the unrepresented minority owners are unfounded. This over-  
19 simplistic academic view of fiduciary duties is not grounded in reality and ignores the  
20 inherent role conflicts of the VELCO Board members. The overwhelming majority of  
21 VELCO Board members are serving several masters. The VELCO Board itself has  
22 recognized this as an issue:

1           “The unique challenge the VELCO Board faces is that Directors who  
2           also serve as directors or officers/managers of the distribution utilities  
3           have three roles: representing VELCO shareholders collectively,  
4           representing individual distribution utilities as individual VELCO  
5           owners, and as a director, officer, or employee of a VELCO customer.”  
6           (VELCO Board of Directors Request for Proposal seeking outside  
7           corporate governance review, produced at 7770VELCO-00214.)  
8

9           More concisely, “Chris Dutton probably expressed it best when he said  
10          VELCO’s governance structure has inherent conflicts because the majority of  
11          Directors wear three hats—Director of VELCO, shareholder of VELCO, and  
12          customer of VELCO.” (VELCO Board Memo, Board Planning Meeting:  
13          Session 3, produced at 7770VELCO-01581 to 01582.)

14          The concept of “fiduciary duty” is being used both offensively and  
15          defensively in this proceeding. On the one hand, Petitioners argue that the  
16          directors’ duties of loyalty to VELCO will prevent them from taking actions in  
17          furtherance of the Combined Company’s interests and that minority owners  
18          should take comfort in that. On the other hand, Petitioners and VELCO also  
19          argue that appointment of “public good” directors is impermissible because it  
20          would create a conflict inconsistent with the duty of loyalty owed to VELCO,  
21          even though Petitioner’s VLITE proposal would create the same type of  
22          conflict.

23          To me, the fact that all Directors may not be able (or reasonably expected) to  
24          put blinders on and entirely disregard their other professional roles and allegiances

1 while serving on the VELCO Board is only bolstered by the request of the Combined  
2 Company for more than one Board seat: if all directors were able to exercise  
3 unwavering loyalty to VELCO it shouldn't matter how many representatives the  
4 Combined Company has on the VELCO Board, there would be nothing to gain. I  
5 don't mean to belittle the importance of the fiduciary duties of corporate directors; my  
6 point is simply that it would be naïve to conclude just because a fiduciary duty exists it  
7 will be adhered to unequivocally. The role conflicts that exist, and that have been  
8 readily and repeatedly acknowledged by the VELCO Board itself, must be considered  
9 when considering an appropriate governance structure for VELCO. And, to the extent  
10 steps can be taken to mitigate the effects of any role conflicts, such as requiring greater  
11 diversity on the VELCO Board to make any such conflict more diffuse, they should be  
12 considered.

13  
14 **III. Many of the alleged theoretical negative consequences that could result**  
15 **from a change of VELCO governance are vastly overstated and alarmist.**  
16

17 Many of the characterizations of the types of problems that could be inflicted  
18 on VELCO and the rampant chaos that would allegedly ensue if one governance model  
19 or another was adopted are overstated and alarmist. Petitioners imply that increasing  
20 the number of seats from 13 to 15 rather than reducing the Board from 13 to 11 or  
21 broadening the representation on the Board to include presently unrepresented

1 distribution utilities would make governance so burdensome and cumbersome that  
2 nothing would get done and the transmission system would suffer. Commissioner  
3 Brownell testifies about the impact a governance change could have on the cost of  
4 credit, VELCO's credit ratings and its ability to attract capital, and expresses concern  
5 that VELCO may have difficulty obtaining officers and directors insurance if the  
6 proposal of DPS was adopted.

7 Remembering that the current VELCO Bylaws allow for up to 21 Directors and  
8 acknowledging that corporate Boards take a multitude of different shapes and sizes, I  
9 find these concerns overblown and unjustified. I truly hope that VELCO is not really  
10 as fragile as some of the witnesses make it out to be. There are several workable  
11 options for VELCO governance that would allow greater inclusion of stakeholders  
12 without causing catastrophic repercussions.

13  
14 **IV. The stability and oversight created by the comprehensive regulatory**  
15 **environment in which VELCO operates allows for and should encourage a wider**  
16 **representation of interests in the VELCO governance structure rather than the**  
17 **opposite.**  
18

19 Much has been made of the oversight to which VELCO is subject in support of  
20 an argument that essentially says: "there is nothing the majority owner could do to  
21 harm the minority owners, so don't worry about it." This oversight by the Vermont  
22 Public Service Board, the Federal Energy Regulatory Commission, ISO-NE, and the

1 Vermont System Planning Committee, implemented through the New England Open  
2 Access Transmission Tariff, the 1991 Transmission Agreement, and the Three-Party  
3 Transmission Agreement, is nothing if not robust. However, that same comprehensive  
4 regulation and oversight also supports an argument for wider representation in VELCO  
5 governance. I would argue that due to the same regulatory environment: “there is nothing  
6 the minority owners could do to harm the majority owner, so don’t worry about it.”  
7 Given the highly regulated environment and the stability created thereby, I believe  
8 good public policy should err towards inclusion of more owners in VELCO  
9 governance rather than less.

10  
11 **V. Flexibility should be a guiding principle in fixing a VELCO Board**  
12 **structure that will serve Vermont’s distribution utilities and their ratepayers for**  
13 **the long term.**  
14

15 One of the fundamental flaws in all of the governance proposals put forth, with  
16 the exception of the cooperative model based on “one member one vote,” is that not  
17 one of them is capable of evolving over time without further PSB action. There are  
18 numerous scenarios well within the realm of possibility whereby further consolidation  
19 could take place within the industry or other changes could occur requiring the PSB to  
20 revisit VELCO’s Board structure. Whether the sale of Burlington Electric Department  
21 (perhaps less of a concern following recent mayoral elections) or additional utilities  
22 withdrawing from VPPSA, under most of the VELCO governance proposals under

1 consideration any such change would require further intervention of the PSB, and  
2 likely the participation of virtually all of Vermont's distribution utilities in the same  
3 manner as this Docket. The cooperative model is enduring; if GMP acquired another  
4 distribution utility the acquired company's seat would simply be eliminated. It is in  
5 the interest of all parties that whatever Board structure is ultimately settled on for  
6 VELCO, it is flexible and able to serve the needs of Vermont ratepayers for many  
7 years ahead.

8  
9 **Q4. Is there anything further you would like to add?**

10 **A4.** Yes. I want to state again, at the risk of becoming repetitive, that the concerns  
11 over VELCO governance expressed in this proceeding have enormous consequences  
12 for all of Vermont's distribution utilities, and particularly the smaller municipals. As  
13 the General Manager of a municipal utility which has proudly served its ratepayers  
14 since 1911, I believe that having representation on the VELCO Board, having more  
15 knowledge and a better understanding of the decisions being made with respect to  
16 transmission investments and reliability, and being afforded a venue to advocate on  
17 behalf of our utility at VELCO in a meaningful way are essential to ensuring our  
18 continued success.

19  
20 **Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

1 A. Yes it does.