STATE OF VERMONT
PUBLIC SERVICE BOARD

Joint Petition of Central Vermont Public Service Corporation, Danaus Vermont Corp., Northern New England Energy Corporation for itself and as agent for Gaz Métro Limited Partnership and its parents, Green Mountain Power Corporation and Vermont Low Income Trust for Electricity, 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

OPPOSITION TO ADMISSION OF "PREFILED" TESTIMONY FOLLOWING CLOSE OF TECHNICAL HAERINGS

AND

MOTION TO STRIKE IMPERTINENT AND IMMATERIAL REFERENCES TO SHAREHOLDERS AGREEMENT FROM LEGAL BRIEFS

NOW COMES the Town of Stowe Electric Department ("SED"), pursuant to Vermont Public Service Board Rules 2.216(C) and 2.222 and Vermont Rule of Civil Procedure 12(f), and hereby requests that the Board (i) deny admission into evidence of certain testimony submitted by Petitioners following the close of technical hearings, and (ii) strike all references to a Shareholders Agreement from the Proposed Findings of Fact and/or Legal Briefs submitted by Vermont Electric Power Company, Inc. ("VELCO"), the City of Burlington Electric Department ("BED"), the Vermont Public Power Supply Authority, Inc. ("VPPSA"), and the Vermont Electric Cooperative, Inc. ("VEC").

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I. INTRODUCTION AND FACTUAL BACKGROUND

This Docket has been pending since September 2, 2011. A Scheduling Order was issued on September 27, 2011, and subsequently amended on October 3, 2011, November 4, 2011, and a final time on December 16, 2011. The December 16, 2011 Scheduling Order, which presently remains in effect, imposed deadlines for filing of direct testimony on issues relating to VELCO governance by the Department of Public Service ("DPS") by January 10, 2012, all other Non-Petitioner direct testimony by January 20, 2012, Petitioners' rebuttal testimony by February 15, 2012, and Non-Petitioners surrebuttal testimony by March 18, 2012. This aggressive schedule, tailored to accommodate the schedule set forth in Petitioners' Agreement and Plan of Merger, was adhered to by all Parties to this Docket, including all of the State's eighteen distribution utilities and its transmission utility VELCO.

Eight Days of Technical Hearings were conducted by the Board on March 21, 22, 26, 27, 28, and 29, and April 3 and 4, during which the prefiled evidence of all Parties was properly admitted into evidence. Now, after eight months of this proceeding, a month after the close of evidence, and two days before the deadline for filing Reply Briefs, Petitioners have attempted to casually submit additional evidence to the Board with the apparent expectation that it would be admitted into the record without verification or authentication, and in defiance of the rights of the Parties to this proceeding to cross examine those endorsing the testimony and provide responsive testimony of their own.

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On May 2, 2012 Petitioners submitted several documents to the Board, including a Letter Agreement, Shareholder Agreement, and Waiver of Rights of First Refusal ("Owner Agreements"). It is unclear for what purpose these documents were provided to the Board as they were not accompanied by a motion seeking their admission into evidence. To the extent these documents are intended to be introduced into the record of this proceeding at this late stage, or relied upon by the Board in its deliberations of this matter, the Town of Stowe Electric Department vehemently objects.

On April 23, 2012, even before Petitioners submitted the Owner Agreements to the Board, VELCO, BED, VPPSA and VEC each submitted Proposed Findings of Fact and/or Legal Briefs relying on the Owner Agreements, which had not then, and which still have not, been introduced into evidence. Due to the prejudicial nature of the Owner Agreements themselves, the inaccurate factual suppositions upon which they were presented to the Board, and the requirements of Board Rule 2.222, all references to the Owner Agreements should be stricken from the Proposed Findings of Fact and/or Legal Briefs of VELCO, BED, VPPSA and VEC, as well as prospectively from the Reply Briefs of any party, which are due on May 4, 2012.

II. ARGUMENT

A. The Letter Agreement, Shareholder Agreement, and Waiver of Rights of First Refusal Have Not Been and Should Not Be Admitted Into Evidence

Two days before the filing deadline for Reply Briefs the Parties to this proceeding have been presented with additional testimony to consider, some of which directly

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contradicts prior testimony submitted in this Docket, including provisions of the Memorandum of Understanding ("MOU") entered into between GMP and DPS, admitted into evidence as Exh. Petitioners-DPS-1. The Owner Agreements serve no legitimate evidentiary purpose and the inaccurate factual premise upon which they were submitted, that all of the State's distribution utilities other than SED are expected to consent to the Owner Agreements, is sufficiently prejudicial to require denial of their admission into evidence.

Board Rule 2.216(A) provides that evidentiary matters in Board Proceedings are to be governed by 3 V.S.A. § 810 and V.R.C.P. 43. V.R.C.P. 43 requires that "testimony of witnesses shall be taken orally in open court" unless otherwise permitted by applicable procedural rules, such as Board Rule 2.213 which allows for filing of written Prefiled Testimony. 3 V.S.A. § 810 provides that "a party may conduct cross-examinations required for a fill and true disclosure of the facts." 3 V.S.A. § 810(3). 3 V.S.A. § 809, which governs contested administrative proceedings, also provides that "opportunity shall be given all parties to respond and present evidence and argument on all issues involved" and that "findings of fact shall be based exclusively on the evidence and on matters officially noticed." 3 V.S.A. § 809(c), (g).

These statutorily created procedural mandates are also supported by case law indicating that, while the scope of admissible evidence may be broader before the Board than in a Court, the procedures for moving its admission are no less applicable. In re Twenty-Four Vermont Utilities, 159 Vt. 339, 349-350 (1992) ("Rules of evidence are relaxed in public service board proceedings so that evidence not admissible in court is

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admissible by the board if it may illuminate the case; however, evidence must be admitted before it is relied upon by the board.") *See also:* In re Central Vermont Public Service Corp., 141 Vt. 284, 449 (1982).

The Owner Agreements contain provisions that would materially alter the governance of VELCO in manners not contemplated or considered in this proceeding to date and which contradict evidence which has already been admitted into the record, specifically Paragraph 10 of the GMP/DPS MOU. Exh. Petitioners-DPS-1 at ¶ 10, Page 4. The rights of first refusal granted to VELCO's shareholders (Vermont's distribution utilities) in VELCO's Bylaws, were discussed at some length during the Technical Hearings. Petitioners indicated that unilaterally eliminating the right of first refusal of the other VELCO owners was not their preferred course of action and in Paragraph 10 of the GMP/DPS MOU agreed to use their best-efforts to obtain waivers from VELCO's other shareholders. The Owner Agreements, on the other hand, indicate that if waivers are not obtained from all shareholders, Petitioners, and any other utility inclined to join them, will amend the VELCO Bylaws in order to bypass the minority shareholders' rights of first refusal. As Petitioners stated in their cover letter to the Board that accompanied the filing of the Owner Agreements; SED has indicated that it will not sign the Owner Agreements. This fact was made clear through email communication to the Parties to this Docket on April 17, 2012 and again on April 23, 2012. Accordingly, the condition contained in Section 3 of the Letter Agreement creates an imaginary and illusory precondition that has no hope of being fulfilled. This approach is intended to dull the sharp edges of Petitioners plan to steam roll into effect whatever governance changes

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upon which the Board may condition an approval of the merger. To date Petitioners have made no effort, never mind "best efforts," to obtain SED's waiver of its right of first refusal.

The Owner Agreements are an attempt by the Petitioners to draw attention away from certain actions they can unilaterally (Article VIII of the VELCO Bylaws only requires majority approval to make amendments) and would otherwise take against the interests of VELCO's minority shareholders by inviting accomplices to act in concert with them. However, because it is clear that the Combined Company could unilaterally impose whatever changes to VELCO's governance imposed by the Board without the assistance of other VELCO owners, the Owner Agreements serve no legitimate evidentiary purpose. And, contrary to the implications made in Petitioners' filing, SED is not the only distribution utility to reject the Owner Agreements. The Village of Hyde Park Electric Department has also indicated that it will not sign the Owner Agreements and several other utilities have expressed serious concerns with their terms and uncertainty as to whether or not they will sign on. Of course, because the Owner Agreements have been submitted the Board unsigned, it remains unclear which utilities will ultimately agree to their terms.

Considerable testimony has already been submitted in this proceeding on the issue of VELCO governance; accordingly, after cross examination is complete and the evidence closed, the Owner Agreements should not be admitted into evidence. SED respectfully requests the Board deny admission of the Owners Agreements into evidence

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and disregard their contents for the purposes of its deliberations on the issues raised in this Docket.

B. The "Shareholders Agreement" Relied Upon By VELCO, BED, VEC, and VPPSA in Their Proposed Findings of Fact and/or Legal Briefs Is Not In Evidence and All References Thereto Should Be Stricken

Even before the Petitioners filed the Owner Agreements with the Board, several parties had already relied upon them in their Proposed Findings of Fact and/or Legal Briefs. As set forth above, the Owner Agreements are intended to show unanimous or near-unanimous support among Vermont's distribution utilities for the proposed changes to VELCO governance. Unanimous support does not exist and the Owner Agreements are not part of the evidentiary record in this proceeding.

Board Rule 2.222 requires that "each proposed finding shall contain a citation or citations to the specific part of parts of the record containing evidence upon which the proposed finding is based." Here, because references are made to a document not introduced into evidence, they are surplusage with respect to the Proposed Findings of Fact and/or Legal Briefs of the referencing parties. V.R.C.P. 12(f) provides that the court "may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Accordingly, SED urges the Board to strike the following passages or sections of the Proposed Findings of Fact and/or Legal Briefs of VELCO, VPPSA, BED, and VEC:

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(A) VELCO concluded in its brief that "certain issues of importance for VELCO's governance...have recently been resolved...and that a formal agreement addressing these issues signed by most if not all of VELCO's owners will be filed in the near future, certainly before reply briefs are due in this case." (VELCO Brief at 5-6.)

(B) VPPSA observed that the "parties have reached agreement on a Shareholders' Agreement, subject to approval and execution by the VELCO Shareholders (the "Shareholders' Agreement"). The signatories expect to file an executed copy of the Shareholders' Agreement by the due date for reply briefs." (VPPSA Brief at 7-8.) "The parties will file a Shareholders' Agreement as *evidence* that the VELCO governance issue has been resolved, but will not seek and do not require Board approval of it." (VPPSA Brief at 8, italics added.)

(C) VEC provided Proposed Findings of Fact with placeholders for a yet-to-be-determined date of filing the Shareholder Agreement with the Board and a yet-to-be-assigned "Exhibit number":

> "12. VEC supports the Shareholders Agreement that was submitted by VELCO shareholders on _____ as Exhibit ___. That Agreement achieves the objectives of removing majority control by GMP and eliminating GMP's ability to remove VELCO as the manager of VT TRANSCO. In addition, it also memorializes what had been long-standing but unwritten agreements that governed representation on the VELCO Board." (VEC Brief at 4, Proposing Finding 12.)

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VEC goes on to propose another finding that "[w]ith the Shareholders Agreement in place, VEC believes that the concerns raised by the merger's impact on VELCO have been fully resolved." (VEC Brief at 4, Proposed Finding 13.)

(D) BED's Brief openly acknowledges that "*since the close of the technical hearings in this matter* VELCO's owners and the DPS have negotiated a shareholders agreement" and "[w]ith the shareholder agreement in place, which BED believes will occur by the date for filing reply briefs in this matter, BED is supportive of the MOU." (BED Brief at 4; italics added.)

Both the contents of the Owner Agreements and their mere submission to the Board are prejudicial and the factual allegations as to their support are incomplete and inaccurate. Because Board Rule 2.222 requires that proposed finding cite specifically to the evidentiary record and the Owner Agreements have not been admitted into evidence, references thereto are immaterial and impertinent and should be stricken from the Proposed Findings of Fact and/or Legal Briefs of VELCO, VPPSA, BED, and VEC and prospectively from the Reply Brief of any Party.

III. CONCLUSION

There is no reason the Owner Agreements could not have been developed and introduced into evidence during the course of this proceeding; there was certainly ample opportunity. However, rather than following routine procedure, Petitioners now seek to

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introduce the Owner Agreements into the record, or more incredulously, provide them for the Board's consideration without moving their admission. The credibility of this proceeding would be in serious jeopardy if the Board were to allow informal submission of written testimony on a rolling basis following the close of hearings.

WHEREFORE, for the reasons stated herein, the Town of Stowe Electric Department respectfully requests this Board:

(i) Refuse to admit the Owner Agreements into evidence;

(ii) Strike all references to the Shareholders Agreement in the Proposed Findings of Fact and/or Legal Briefs of VELCO, VPPSA, BED, and VEC and prospectively in the Reply Briefs of any Party.

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

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REPLY BRIEF OF
THE TOWN OF STOWE ELECTRIC DEPARTMENT

NOW COMES the Town of Stowe Electric Department, pursuant to Vermont Public Service Board Rule 2.223, and hereby submits its Reply Brief in the above-captioned Docket.

MEMORANDUM

SED submits this Reply Brief along with an Opposition to Admission of "Prefiled" Testimony Following Close of Technical Hearings and Motion to Strike References to Shareholders Agreement from Legal Briefs and reserves the right to supplement this pleading in the event the Board allows admission of the testimony referenced therein.

I. The Evidentiary Record is Entirely Devoid of Any Legitimate Justification Supporting the Permanent, Systematic, and Institutional Exclusion of SED and WEC From Appointing Directors to the VELCO Board

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No Party has made proposed findings of fact or made any argument in its Legal Brief to justify the permanent, systematic, and institutional exclusion of two of Vermont's seventeen (post-merger) distribution utilities from participating in VELCO governance, SED and Washington Electric Cooperative ("WEC"). Given the relatively small number of distribution utilities in Vermont it is not difficult to conceive of a host of straightforward and simplistic mechanisms that would allow all distribution utilities the ability and opportunity to participate in VELCO governance on the Board level. Should the Board chose to implement the VELCO governance proposal contained in the GMP/DPS MOU, SED requests and encourages the Board to make affirmative findings in its Order explaining its decision to permanently, systematically, and institutionally exclude SED and WEC from participating in VELCO governance at the Board level.

II. The VELCO Governance Structure Reflected in the GMP/DPS MOU Does Not Comply With The Principles of Good Governance Testified To in the Proceeding

The VELCO governance proposal set forth in the GMP/DPS MOU furthers the interest of political expedience rather than implementing principles of good corporate governance. The record does not reflect how allowing the Combined Company to appoint four Directors to the VELCO Board is consistent with principles of good corporate governance. The same can also be said for the three vestigial seats allocated to the City of Burlington Electric Department ("BED"), Vermont Electric Cooperative, Inc. ("VEC"), and Vermont Public Power Supply Authority, Inc. ("VPPSA"), which are institutionally set moving forward regardless of the State of Vermont's utility landscape or each utility's respective and comparative investment in the transmission system.

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These allocations are the result of political compromise rather than thoughtful and careful deliberation by the Board as to what governance solution it believes would best serve VELCO for the years and decades to come.

The VELCO governance proposal set forth in the GMP/DPS MOU is also unnecessarily complex and frustrates the ability of the public to understand the ownership and operation of Vermont's transmission system. Aside from the concerns raised by SED in its Initial Brief that the roles of VELCO and Vermont Transco, LLC can and should be achieved by one company, the governance proposal adds additional documents and duplicative processes to the governance of what ought to be a relatively streamlined company. Instead of corporate governance being dictated by one document, the Vermont Transco Operating Agreement for example, the governance proposals being advanced by Petitioners and others would, by design and resulting necessity, require adherence, at a bare minimum, to the Vermont Transco Operating Agreement, the VELCO Bylaws, the Management Services Agreement Between Vermont Transco and VELCO, a Voting Agreement, a Shareholders Agreement, and a Letter Agreement. In addition to the number of controlling documents, the proposed solution sets up two new independent nominating boards to appoint Directors to the VELCO Board, one directed by VLITE and another by the Public Power utilities. There is nothing transparent or user-friendly about this overly-complex and convoluted structure, which will make VELCO governance more cumbersome after this proceeding than it was before.

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III. Conclusion

The Combined Company has admitted it has the ability and willingness to force whatever VELCO governance changes the Board may impose as a condition of the merger upon the other shareholders of VELCO. If that is the way changes to VELCO governance are expected to take place, we encourage the Board to require the Combined Company to force a sensible, well reasoned, and flexible solution upon us. The tradition of VELCO governance being dictated by informal practice and custom, as has been the practice in the past, is not worth perpetuating. Vermont's ratepayers and citizens deserve more than side letters and side agreements to govern their transmission system; implementation of the GMP/DPS MOU would convert this historic opportunity into a lost opportunity.

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

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