

STATE OF VERMONT
PUBLIC SERVICE BOARD

In Re: 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.)

PSB Docket No. 7770

REPLY BRIEF OF THE VERMONT ELECTRIC POWER COMPANY, INC.

The Vermont Electric Power Company, Inc. ("VELCO") files this reply brief to (1) support the Letter Agreement and form of Shareholders Agreement filed with the Public Service Board on May 2, 2012, and (2) respond to matters raised by the Stowe Electric Department in its initial brief. As explained below, VELCO believes that the governance issues affecting VELCO have been adequately addressed by the aforementioned Letter Agreement and the accompanying form of Shareholders Agreement, along with the Memorandum of Understanding ("MOU") between the Petitioners and the Department of Public Service ("DPS"). VELCO recommends that the Board reject Stowe Electric Department's arguments opposing the MOU as modified by the Letter Agreement that VELCO's owners, except Stowe, are prepared to execute.

I. THE MOU, LETTER AGREEMENT AND SHAREHOLDERS AGREEMENT APPROPRIATELY RESOLVE OPEN ISSUES RELATED TO VELCO GOVERNANCE.

Petitioners, DPS, VELCO, and representatives of most of VELCO's owners collaborated on the Letter Agreement and Shareholders Agreement to fill in certain details related to VELCO governance that were not addressed in the MOU.¹ Significantly, the Shareholders Agreement establishes "independence" criteria for the independent members of VELCO's board of directors and requires that the directors designated by the Vermont Low Income Trust for Electricity, Inc. ("VLITE"), as well as the two directors designated by the public power utilities collectively, meet those independence criteria. These provisions satisfy the concerns VELCO raised in its Brief about the details missing from the MOU.² The negotiated resolution of these issues left open in the MOU is a meaningful success that benefits VELCO, its shareholders and customers, and the public generally. The agreement among most of VELCO's owners and the DPS, represented by the MOU, Letter Agreement and Shareholders Agreement collectively, effectively and appropriately resolves issues raised with respect to VELCO governance in this proceeding.³

II. THE BOARD SHOULD REJECT STOWE ELECTRIC DEPARTMENT'S ARGUMENTS OPPOSING THE PROPOSED CHANGES TO VELCO GOVERNANCE.

The Stowe Electric Department raises three arguments against the proposed changes to VELCO's governance: (1) Stowe's ownership interest in Vermont Transco LLC should entitle it

¹ It was both expected and appropriate for VELCO's owners to collaborate on a way to address the details that the Petitioners and the DPS left open in the MOU. Tr. 4/3/2012 at 166 (Reilly); tr. 4/3/2012 at 234-236 (Powell); tr. 4/4/2012 at 121 (Miller).

² VELCO Brief at 5-6. See tr. 3/28/2012 at 32, 33 (Dutton).

³ VELCO does not believe that the Letter Agreement and Shareholders Agreement require Board approval, and the Company is not seeking such approval in this Reply Brief.

to a designated seat on VELCO's board of directors; (2) the 2006 corporate reorganization creating Vermont Transco LLC was unnecessary and complicates "appropriate resolutions to the VELCO governance questions posed in this Docket"⁴; and (3) the transfer of VELCO shares to VLITE unlawfully creates a new member of Vermont Transco LLC under § 3054(c)(7) of Title 11. These arguments are without merit and ought to be rejected.

Stowe argues that it has a larger ownership stake in Vermont Transco than do Vermont Electric Cooperative and the Burlington Electric Department that should entitle Stowe to a seat on the board of Vermont Transco's manager, VELCO.⁵ As of August 31, 2010, Stowe holds a 4.89% interest in Vermont Transco, most of which represents specific facility membership units.⁶ Specific facility membership units were created through a settlement of litigation at the FERC.⁷ They are used to help Vermont Transco members finance their cost share of transmission upgrades under the 1991 Vermont Transmission Agreement.⁸ As Stowe acknowledges, its ownership interest in Vermont Transco will change when its specific facility units are reoffered to Vermont Transco's members as required by the Operating Agreement.⁹ Notwithstanding Stowe's temporary increased stake in Vermont Transco, it remains a small utility with fewer customers than either the Vermont Electric Cooperative or the Burlington Electric Department.¹⁰ Vermont's long-standing policy has been to allow utilities with a larger customer base and financial risk in VELCO to have a greater influence over decisions affecting

⁴ Stowe Brief at 8.

⁵ Stowe Brief at 7.

⁶ Exhibit VELCO-CLD-8.

⁷ Exhibit VELCO-CLD-8, § 3.3(h).

⁸ Exhibit VELCO-CLD-8, § 3.3(h), (i); Dutton pf. at 6.

⁹ Stowe Brief at 7; Exhibit VELCO-CLD-8, § 3.3(i).

¹⁰ Tr. 4/2/2012 at 22 (Powell).

the transmission system.¹¹ Stowe has not presented any convincing reason to depart from that policy.

Stowe suggests in its Brief that membership on VELCO's board of directors should fluctuate relative to the fluctuation in ownership interests in Vermont Transco.¹² The record lacks any evidence to support this novel approach to corporate governance. Moreover, Stowe's suggestion runs counter to the need to ensure that the proposed merger does not result in tyranny of the majority. If Stowe's suggestion was accepted, then ownership in Vermont Transco would govern the composition of VELCO's board of directors; the post-merger GMP would control both VELCO and Vermont Transco unilaterally.

Stowe also challenges – for the first time since 2006 – the wisdom of creating Vermont Transco through a corporate reorganization of VELCO. The reorganization has demonstrated economic benefits to the state's electric companies and their ratepayers by reducing the revenues required to provide transmission service.¹³ Stowe offered no evidence in this proceeding on this issue. The Board should not base any decision on Stowe's belief that "the two company structure approved [by the Board] to determine an appropriate governance structure for VELCO is a mistake."¹⁴ Stowe had the opportunity to raise this concern years ago when the two-company structure was originally proposed and considered. The proposed merger of two of VELCO's owners does not require reconsideration of that decision, particularly where the evidentiary record provides no support for it.

¹¹ Dutton pf. at 20-21.

¹² Stowe Brief at 7 ("[T]he Board structure should be flexible enough to adapt to such changes in respective ownership.").

¹³ *In re Vt. Elec. Power Co., Inc.*, 251 P.U.R.4th 331, 336 (Vt. P.S.B. 2006).

¹⁴ Stowe Brief at 9.

Finally, the Board should reject Stowe's claim that approving the proposed changes to VELCO's ownership through a transfer of shares to VLITE creates a new member in Vermont Transco in violation of 11 V.S.A. § 3054(c)(7). Section 3054(c)(7) requires the members of a limited liability company to approve the addition of new members.¹⁵ VELCO is not a limited liability company, it is a corporation governed by Title 11A of the Vermont Statutes Annotated.¹⁶ No party has proposed to allow VLITE to become a member of Vermont Transco. The MOU and Shareholders Agreement filed in this matter to resolve the VELCO governance issues arising from the proposed merger are consistent with Vermont law governing corporations and limited liability companies. Stowe's argument to the contrary is without legal or factual support.

Conclusion

VELCO, many of its owners, the Petitioners and the Department of Public Service worked hard to achieve an agreed-upon solution to address the possible tyranny of the majority that could occur from the proposed merger of GMP and CVPS. The solution as reflected in the Letter Agreement, Shareholders Agreement and Waiver of Rights of First Refusal filed by Petitioners on May 2 will protect VELCO's minority shareholders, increase the number of independent directors on VELCO's board, define what "independence" means, and formalize what has been heretofore an informal director nomination process. This result has benefits to all parties and the public and, if the merger is approved, will allow VELCO and its owners to

¹⁵ 11 V.S.A. § 3054(c)(7).

¹⁶ Dutton pf. at 3, 5, 6; Exhibits VELCO-CLD-1 and VELCO-CLD-2.

refocus their efforts on serving the needs of electric customers in the state and region.

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Rutland, Vermont



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