

**STATE OF VERMONT  
PUBLIC SERVICE BOARD**

Joint Petition of Central Vermont Public )  
Service Corporation, Danaus Vermont Corp., )  
Gaz Métro Limited Partnership, Gaz Métro )  
inc., Northern New England Energy )  
Corporation for itself and as agent for Gaz )  
Métro Limited Partnership's parents, Green )  
Mountain Power Corporation and Vermont )  
Low Income Trust for Electricity, Inc. for )  
approval of: (1) the merger of Danaus into )  
and with Central Vermont, (2) the acquisition )  
by Northern New England of the common )  
stock of Central Vermont, (3) the amendment )  
to Central Vermont's Articles of Association, )  
(4) the merger of Central Vermont into and )  
with Green Mountain, and (5) the acquisition )  
by VLITE of a controlling interest in )  
Vermont Electric Power Company, Inc. )

Docket No. 7770

**PREFILED TESTIMONY OF**

**DAVID MULLETT**

**ON BEHALF OF  
THE VERMONT PUBLIC POWER SUPPLY AUTHORITY**

- 1 Q1. Please state your name, position, and business address.
- 2 A1. My name is David Mullett. I am the General Manager of the Vermont Public Power Supply  
3 Authority ("VPPSA"), 5195 Waterbury-Stowe Road, Waterbury Center, Vermont 05677.  
4
- 5 Q2. Please provide a summary of your background and experience.
- 6 A2. My resume is attached as Exhibit VPPSA-1.  
7
- 8 Q3. Have you previously testified before the Public Service Board?

1 A3. I have not testified on behalf of VPPSA in a contested case, but I have appeared numerous  
2 times at Public Service Board (“PSB” or “Board) workshops and have participated in many  
3 contested cases as an attorney.

4  
5 Q4. Do you have specific experience relating to the issues upon which you are testifying in this  
6 proceeding?

7 A4. Yes. As General Manager of VPPSA and a VELCO Board member, I am familiar with the  
8 utility, corporate and governance issues that I address in my testimony.

9  
10 Q5. What is the purpose of your testimony?

11 A5. My testimony sets forth the position of VPPSA and its member electric systems on the  
12 proposed merger of Green Mountain Power Corporation (“GMP”) and Central Vermont  
13 Public Service Corporation (“CVPS”).

14  
15 Q6. Please describe generally that position.

16 A6. VPPSA has not analyzed the claimed ratepayer savings and other asserted benefits of the  
17 merger as claimed in the petition in this case; those issues, and the ultimate decision as to  
18 whether the merger should be approved under the relevant statutory criteria, are for the  
19 Board to resolve. From the perspective of VPPSA and its members, however, the merger  
20 appears to have effects that, absent appropriate conditions attached to the merger if it is  
21 approved, could work to the disadvantage of Vermont ratepayers. For many years, VPPSA  
22 and its members have benefitted from the presence of both GMP and CVPS relative to the  
23 procurement of services in such areas as power supply, transmission services and  
24 distribution services. Having both entities as potential partners and counter parties in these

1 realms has enabled VPPSA and its members to at times “shop” for these services or, at the  
2 very least, enabled us to evaluate the cost and quality of proposed CVPS or GMP services  
3 against a general sense of what the cost and quality of the other entity has been relative to  
4 comparable services. This aspect of “wholesale competition” will disappear with the merger  
5 and to some extent, which is difficult to quantify, that may adversely impact the ability of  
6 VPPSA and its members to negotiate optimal arrangements with the surviving entity.

7  
8 Moreover, from a statewide ratepayer perspective, the existence of multiple utilities,  
9 including small, nonprofit publically owned ones, provides the public, the regulatory  
10 community and the ratepayers themselves with valuable opportunities to benchmark and  
11 compare rates and other components of utility performance, as well as to undertake the  
12 important and constructive collaborations that have occurred (and are ongoing) in such areas  
13 as AMI, transmission planning and consideration of low income program issues. To the  
14 extent that a merger reduces these benefits and opportunities, it is important that that merger  
15 be subject to conditions that at least mitigate that loss.

16  
17 Q7. Are there areas of specific concern in addition to these overall considerations?

18 A7. Yes. These concerns can generally be considered to fall within four categories:

- 19 (1) Subtransmission issues;  
20 (2) Distribution agreements, understandings and procedure issues;  
21 (3) Joint ownership and joint participant agreement issues;  
22 (4) VELCO governance/ TRANSCO Operating Agreement issues.

23  
24 Q8. Please address the subtransmission issues.

1 A8. Two VPPSA members, the Village of Johnson Water & Light Department (“Johnson”) and  
2 the Village of Hyde Park Electric Department (“Hyde Park”), are working with Vermont  
3 Electric Cooperative, Inc. (“VEC”) and GMP to negotiate a mutually acceptable agreement  
4 as to ownership and operation of the transmission line that best serves the interests of the  
5 customers served by the line – including customers of Hyde Park and Johnson – from the  
6 perspective of reliability, serviceability, and cost. VEC will, I believe, address this in its  
7 testimony. There may in the future be other subtransmission issues that arise, and we have  
8 agreed with GMP that we will negotiate in good faith to resolve any disputes or issues that  
9 come up. In addition, contingent upon the closing of the proposed merger between CVPS  
10 and GMP, Hyde Park and GMP have agreed to negotiate in good faith to request Board  
11 approval to terminate a 3-Phase Service Agreement between Hyde Park and CVPS that was  
12 put in place when the service territories were established.

13

14 Q9. Please explain your concerns regarding distribution issues.

15 A9. A number of VPPSA members have agreements, understandings and procedures with GMP  
16 and CVPS. These range from development and updating of distribution standards, and  
17 emergency back-up agreements to, in the case of the Village of Northfield Electric  
18 Department, a comprehensive distribution system maintenance agreement with GMP.  
19 There are also a number of statewide collaborative processes underway, such as in the low  
20 income program docket (7535) and ongoing efforts to improve the Vermont System  
21 Planning Committee through potential amendments to the settlement and orders in the  
22 transmission planning docket (7081). We have sought and obtained the assurance of GMP  
23 that all such understandings, agreements and collaborations will remain in place and that

1 none will be changed or terminated without notice and an opportunity to negotiate in good  
2 faith.

3  
4 Q10. Please explain your concerns with the various agreements to which VPPSA and its members  
5 are parties.

6 A10. We have reviewed the following agreements, in addition to the VELCO/TRANSCO  
7 agreements, to determine if they need to be amended if the merger is completed:

8 (a) McNeil Joint Ownership Agreement. VPPSA agrees with Burlington Electric  
9 Department (“BED”) that a merger of GMP and CVPS will not substantially affect the  
10 owners’ rights and obligations and no amendment is required.

11 (b) Highgate Joint Ownership Agreement. We again agree with BED that this Joint  
12 Ownership agreement DOES need to be amended to require three (3) owners  
13 representing a majority for approval of all major decisions. That is the requirement now  
14 for amending that agreement, and it makes sense to undertake the amendments  
15 necessary to maintain this concept if the merger is approved.

16 (c) Existing Hydro-Quebec Purchase Power Agreement. These documents do not appear to  
17 require amendment from our perspective. It is our understanding that VEC will  
18 evidently succeed CVPS on the Operating Committee under the terms of the  
19 agreements.

20  
21 Q11. Please explain your concerns regarding VELCO governance and the TRANSCO Operating  
22 Agreement.

23 A11. It is important at the outset to recognize that the structure of VELCO governance is not a  
24 proper matter for Board decision in this case, notwithstanding the high degree of public

1 interest in the subject and the benefits to ratepayers of having VELCO (and TRANSCO)  
2 function well. What the petition in this case does correctly recognize is that there are  
3 significant risks and disadvantages to having a post-merger GMP (or any party) with  
4 functional control of VELCO. In this situation, we believe that an appropriate balance  
5 between recognition of VELCO's status as a private for-profit corporation governed by the  
6 provisions of Title 11A and these concerns is found in requiring that *GMP*, the core party  
7 seeking approval of the merger, be required, as a condition of any such approval, to:

- 8 (1) not hold a majority of VELCO Board seats;
- 9 (2) not be able to vote a majority of VELCO shares;
- 10 (3) agree to "super majority" provisions for the termination of VELCO as manager of  
11 TRANSCO or for substantive amendments to VELCO's role as manager of  
12 TRANSCO;
- 13 (4) not have any role in the designation of independent/ public directors of VELCO; and
- 14 (5) contribute an additional \$1 million annually into the statewide low income electric  
15 assistance effort in Board docket 7535.

16  
17 Q12. What is the practical effect of this approach?

18 A12. This approach would and should require collaboration and discussion between VELCO  
19 shareholders, VELCO management, the regulatory community and other stakeholders as to  
20 how the conditions can best be met. VELCO has, in my view, worked positively and  
21 successfully to function with greater transparency and openness in recent times, and its  
22 receptiveness to broad input and insight surrounding the merger conditions is an excellent  
23 opportunity to continue to move forward in this fashion. VPPSA and its members share the  
24 concerns expressed by many parties, including the Department of Public Service ("DPS"),

1 and clearly recognized by GMP in its Petition, that GMP not “control” VELCO following  
2 the merger. The approach outlined in this testimony allows the Board to leave the details of  
3 corporate governance where Title 11A V.S.A. places them, in the hands of the shareholders.  
4 Corporate best practices and the uniform statutes governing private, for profit, corporations  
5 provide adequate authority and guidance to accomplish that goal, especially in conjunction  
6 with the input, dialog and negotiation that is likely in connection with establishing a  
7 corporate governance structure to comply with the conditions of merger we have suggested.  
8

9 Q13. Have you read the recommendations of the DPS regarding VELCO governance?

10 A13. Yes. I have read Professor Dworkin’s testimony.  
11

12 Q14. Do you agree with his proposal?

13 A14. No, although as stated above, I do agree that it is a necessary condition of approval of this  
14 proposed merger that the combined company not control VELCO/ TRANSCO.  
15

16 Q15. Why do you believe that Professor Dworkin’s proposal should not be adopted by the Board?

17 A15. There are a number of reasons:

18 First, the testimony does not address fundamental differences between VELCO and  
19 ISO-NE, EPRI, NERC, etc., which are cited as examples of organizations with “public  
20 directors.” VELCO is a private, for-profit, business corporation organized pursuant to Title  
21 11A of the Vermont Statutes Annotated, and has the rights and obligations established by  
22 law in that Title. I am thus not aware of any directly relevant precedent for the proposal  
23 offered in the testimony.

1           Second, I am not persuaded by the argument that because an organization performs a  
2 function that is important to a constituency, that constituency is entitled to share in  
3 governance of that organization. As one who has been outside counsel to, general counsel  
4 of and now general manager of a public power joint action agency with public power utility  
5 members, I strongly believe in and greatly value the concept of public ownership. As a  
6 society, however, we operate in a world which values both public and private entities.  
7 Many private entities, such as grocery stores and fuel oil dealers, offer goods and services  
8 which are vital to those who buy and use them. We have not, however, generally enacted  
9 laws under which importance is equated to direct governance and management participation  
10 in those enterprises. This does not seem to be an appropriate instance in which to make an  
11 exception, especially where the public interest relative to VELCO activities is already well  
12 protected through the extensive state and federal regulation alluded to above. VELCO is  
13 significantly constrained in its ability to discriminate among transmission users by federal  
14 law, FERC rules, ISO-NE tariffs, and its own tariffs, including its OATT. It is further  
15 constrained in its ability to construct transmission infrastructure by federal law, ISO-NE  
16 rules and Section 248. The public interest in VELCO is and will continue to be well looked  
17 after through these vehicles, and through the ability of both the Vermont legislature and the  
18 United States Congress to change the laws applicable to VELCO to the full extent that they  
19 see fit, consistent with constitutional principles.

20           Third, it is difficult for me to see how the Board could find jurisdiction to order the  
21 changes that Professor Dworkin recommends. Neither VELCO nor most of its shareholders  
22 are petitioners in this docket. Clearly, the legislature and the governor are not subject to  
23 Board jurisdiction, nor could GMP reasonably be required, as a condition of Board  
24 approval, to establish a "State Transmission Nomination Board." As a practical matter this

1 would, I believe, require legislative action. Further, Professor Dworkin does not address the  
2 existing rights of first refusal held by the public power shareholders, allowing them to  
3 acquire their proportionate share of any shares of stock proposed to be transferred. A better  
4 approach, in our view, is for the Board to resist any temptation to manage the details of  
5 exactly how GMP will divest itself of control of VELCO, and simply require that it do so as  
6 a condition of the merger as discussed in answer 11 above.

7  
8 Q16. Do you have any specific comments relative to the VLITE component of the merger  
9 petition?

10 A16. While the vesting of the voting rights associated with VELCO stock in accordance with the  
11 GMP proposal is a positive one from our perspective, we recognize that the Department has  
12 expressed concerns with this approach. If the proposal in the petition is not acceptable to the  
13 Board, VPPSA would recommend a more straightforward approach in which GMP is  
14 simply required to tender an additional \$1 million annually into the docket 7535  
15 collaborative (that is, it is VPPSA's understanding that the \$1 million per year is in addition  
16 to the Docket 7535 obligation that GMP has already agreed to), for purposes of statewide  
17 low income program use as developed by that collaborative. This avoids what seems an  
18 unnecessary degree of entanglement- and possibly one with unintended consequences-  
19 between multiple entities serving multiple purposes. Should the Board on the other hand  
20 decide to accept the VLITE proposal as offered as a condition of the merger, any Board  
21 order, and the documents executed pursuant to it, should make absolutely clear that, as a  
22 Trustee of VLITE, VPPSA would have no responsibility for, or liability associated with, the  
23 disposition of the GMP contribution.

- 1 Q17. Does this conclude your testimony?
- 2 A17. Yes.

EXHIBIT LIST

Exhibit VPPSA-1      Resume of David Mullett

**DAVID JOHN MULLETT**  
1415 Center Road  
Montpelier, VT 05602

**PROFESSIONAL EXPERIENCE**

*General Manager, Vermont Public Power Supply Authority, Waterbury Center, Vermont, March, 2010 to present.*

Serve as general manager of joint action agency with twelve municipal electric utility members, with responsibilities for staff oversight, development of strategic objectives and goals in conjunction with Board of Directors, and other managerial functions.

*General Counsel, Corporate Secretary and Risk Management Coordinator, Vermont Public Power Supply Authority, Waterbury Center, Vermont, January, 2008 – March, 2010.*

Responsibilities included management of regulatory affairs, advocacy before Vermont Public Service Board and Vermont legislature on behalf of the Authority and its member systems, coordination of efforts of external counsel and review of power supply and other electric utility-related documents. Also served as corporate secretary and risk management coordinator for the Authority.

*Lawyer, David John Mullett, Attorney at Law, subsequently David John Mullett, P.C., Montpelier, Vermont, 1997-2007*

Maintained sole law practice encompassing a variety of areas, with concentration in public utility and real estate matters. Represented clients before the Vermont Public Service Board and other administrative agencies, as well as before state and federal courts, including the Vermont Supreme Court. Clients included electric utilities, renewable energy project developers and Vermont Public Power Supply Authority.

*Lawyer, Cheney, Brock, Saudek and Mullett, P.C., Montpelier, Vermont, 1989-1997*

Associate lawyer (1989-1990) and shareholder (1990-1997) in general practice law firm. Concentrated in public utility and litigation matters similar to those in subsequent practice as described above.

*Special Counsel, Vermont Department of Public Service (1987-1988) and Associate General Counsel, Vermont Public Service Board (1988-1989), Montpelier, Vermont*

Represented interests of Vermont utility ratepayers in regulatory proceedings while with Vermont Department of Public Service. As Associate General Counsel of the Vermont Public Service Board, advised state utility regulatory commission and served as hearing officer in contested public utility matters.

*Associate, Morris B. Chapman and Associates, Granite City, Illinois, 1985-1986*

Handled cases in Illinois and Missouri in areas of personal injury, family law, and criminal matters, and did all appellate work for firm with practice primarily concentrated in representation of plaintiffs in railroad and Jones Act personal injury matters.

*Staff Attorney, Fifth District Appellate Court of Illinois (1982-1983) and Law Clerk to Hon. Moses W. Harrison, II, Fifth District Appellate Court of Illinois (1983-1985), Mt. Vernon, Illinois and Granite City, Illinois*

Researched legal issues and prepared draft opinions and orders for appellate judges.

*State's Attorneys Appellate Service Commission, Mt. Vernon, Illinois, 1981-1983*

Prepared briefs and argued cases before Illinois appellate courts on behalf of state's attorneys of the thirty-seven counties comprising the Fifth Appellate District of Illinois.

## **EDUCATION**

*Franklin Pierce Law Center, Concord, New Hampshire*  
Juris Doctor, 1981

*Nichols College, Dudley, Massachusetts*  
Bachelor of Science in Business Administration, magna cum laude, 1978  
(concentration in the study of business management)

## **BAR ADMISSIONS**

State of Vermont  
State of Illinois (currently inactive)  
State of Missouri (currently inactive)  
United States District Court for the District of Vermont  
United States Court of Appeals for the Second Circuit