

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Docket No. 7770

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, In. for approval of: (1) the merger of Danus into and with Central Vermont, (2) the acquisition of 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.

**WASHINGTON ELECTRIC COOPERATIVE, INC.'S
REPLY BRIEF**

NOW COMES WASHINGTON ELECTRIC COOPERATIVE, INC. ("WEC"),
by and through its attorneys, Diamond & Robinson, P.C., who hereby submit the following Reply Brief. In its Reply Brief, WEC addresses three issues: the scope of the Vermont Public Service Board's ("Board") authority to implement the MOU, its authority to remedy the impacts of the merger upon WEC's sub-transmission rates, and the recently filed shareholders' agreement.

I. THE BOARD HAS THE AUTHORITY TO ADDRESS VELCO GOVERNANCE ISSUES RAISED BY THE MERGER AND THE IMPACT UPON THE SUB-TRANSMISSION RATES PAID BY WEC.

The proposed merger of Vermont's two largest electric utilities in this docket is unprecedented in Vermont. The evidence presented in this docket clearly demonstrates the potential for wide ranging impacts upon Vermont rate payers, including the operation of VELCO and other distribution utilities. The PSB has broad authority to address these concerns in order to protect the ratepayers and other distribution utilities, such as WEC.

A. The Board Has The Authority To Address Issues Involving VELCO's Governance.

There should be no question that the Board has jurisdiction over VELCO. VELCO is a Vermont public service corporation. It is permitted to operate by virtue of its Certificate of Public Good issued by the Board. The Board has jurisdiction over companies, and their directors, who are engaged in the transmission of electricity. 30 V.S.A. § 203(1). This includes all matters regarding "[t]he manner of operating and conducting any business subject to supervision under this chapter, so as to be reasonable and expedient, and to promote the safety, convenience and accommodation of the public." 30 V.S.A. § 209(a)(3). The Board has previously exercised such jurisdiction and authority to address disputes involving the makeup of directors on Vermont's public service utilities. See *Bloch v. Wash. Elec. Coop.*, 133 Vt. 326 (1975); *In Re: Vermont*

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Elec. Coop., Docket No. 5806, 1996 WL 577904 (Order 3/20/96).¹ It should not be precluded from doing so now.

The combined company, without adequate conditions and alterations to the operational structure of VELCO, will have the ability to exercise majority control over this important Vermont institution for its own benefit at the potential expense of other utilities and the general public. The PSB should exercise its authority to condition the merger in a manner consistent with those governance provisions contained in the MOU. This will provide a remedy to the concerns about majority control and the need for more independent and diverse opinions on the VELCO Board.

B. The Board Has Authority To Address The Merger's Impact Upon The Sub-Transmission Rates Paid by WEC.

The Board has the authority to condition the merger upon the Combined Company's efforts to mitigate the rate impact upon WEC. Such a condition is within the scope of the Board's powers in reviewing mergers, which is akin to prudential review. Such prudential review is not preempted by FERC.

It is undisputed that WEC will suffer a significant increase to its sub-transmission rates that it would not otherwise experience due to the merger. WEC and its members should not have to bear this expense, which is caused by the anticipated merging or blending of GMP and CVPS tariffs. *See* Exh. WEC Cross 14. GMP has offered no

¹ . The cases cited by VPPSA to the contrary are not applicable here as they do not address issues of the make-up of a utility's directors or boards. *See Westover v. Village of Barton Elec. Dept.*, 149 Vt. 356 (1988)(constitutional challenge to town charter not within the jurisdiction of the Board); *North v. City of Burlington Elec. Light Dept.*, 125 Vt. 240 (1965)(affirming Board authority to restore customer to proper rate class); *Carpenter v. Home Tele. Co.*, 122 Vt. 50 (1960)(overturning Board order requiring utility to depart from properly filed tariff).

reliable evidence or analysis to the contrary. GMP's vague and speculative assertions that recent capital improvements will somehow result in higher rates under the current transmission tariff, without regard to additional depreciation on existing assets, does not provide a reasonable basis to discount the analysis presented by WEC.

The Board is essentially performing a prudential review when determining whether or not the proposed merger can go forward. It is determining whether or not anticipated acquisition or merger is financially sound. *See In Re: Green Mountain Power*, Docket No. 7213 at 5 (Order 3/26/07)(In reviewing acquisitions the Board will consider amongst other factors whether it is financially sound). FERC has recognized that a state regulatory commission's prudence review is not preempted by FERC ratemaking. *See In Re: Central Vermont Public Svc. Corp.*, 84 FERC P 61194 (1998). Therefore, in reviewing the financial soundness or prudence of the merger, the Board can consider the costs to WEC.

The authority to approve of the merger, while exercising the Board's prudential review, implies the authority to exercise conditions for approval. Accordingly, the Board is not impeding on FERC rate making jurisdiction if it conditions approval upon the Combined Company utilizing best efforts within FERC rules and precedent to provide rate mitigation to WEC. No one compelled GMP to undertake the merger, and WEC's ratepayers should not shoulder the cost of this decision.

II. WEC SUPPORTS ADOPTION OF THE SHAREHOLDER AGREEMENT TO IMPLEMENT PORTION OF THE MOU RELATED TO VELCO GOVERNANCE.

As noted in its initial brief, WEC supports those portions of the MOU that apply to VELCO's governance. The proposed shareholders' agreement filed by Petitioners fairly implements portions of the MOU that addresses the potential for majority control by the Combined Company and the need for additional diverse and independent directors.

However, the shareholders' agreement does not address two important aspects or other conditions contained in the MOU related to VELCO governance. It does not address how the selection of the independent directors will occur or the requirement that membership on the operating committee be offered to all Vermont distribution utilities. In the absence of mutual agreement by public power or the shareholders, WEC believes the Board should exercise its broad regulatory authority to implement these provisions. *Supra.*, at ¶ IA above. In particular, WEC should be granted an equal vote in selecting the independent public power directors, and it should have membership on the operating committee. WEC is Vermont's fifth largest electric distribution utility. The size of its service territory is significantly larger than BED. It has suffered without a seat on VELCO's board of directors and its exclusion from the operating committee. Such exclusions adversely impact WEC and its members, who are the residents of forty-two Vermont municipalities across four counties. The Board should exercise its authority to remedy these exclusions within the parameters of the MOU that address VELCO governance.

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