From: MacLean, Alex
Sent: Friday, June 15, 2012 1:58 PM
To: ssmith@DINSE.COM; Vt13@aol.com; twk@tonyklein.com; VVLYONS@cs.com; botzow@sover.net
Subject: Board Order Approving GMP/CVPS Merger
Attachments: 7770 Final Order.pdf

Hi All -

Attached is the Board order approving the GMP/CVPS merger. As the windfall provision was the topic of much discussion in the legislature, it is worth pointing out that the Board discusses this provision at length and it can be found on pages 114-140. The VELCO discussion can be found at 140-149.

Commissioner Miller would be happy to discuss this order with anyone who has questions or would like more details. Liz's contact info is below:

Elizabeth H. Miller
802-828-2321, office
802-522-3090, cell
elizabeth.miller@state.vt.us

Please feel free to forward this to your committee members if you would like.

My Best,

Alex

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7770

Amended Joint Petition of Central Vermont Public Service Corporation ("CVPS"), Danaus Vermont Corp., Gaz Métro Limited Partnership ("Gaz Métro"), Gaz Métro inc., Northern New England Energy Corporation ("NNEEC") for itself and as agent for Gaz Métro's 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 the common stock of CVPS; (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.	)	Hearings at Montpelier, Vermont March 21, 22, 26, 27, 28 & 29, and April 3 & 4, 2012

Order entered: 6/15/2012

PRESENT: James Volz, Chairman
David C. Coen, Board Member
John D. Burke, Board Member

APPEARANCES: *See Appendix A*

Table of Contents

I. INTRODUCTION

This proceeding concerns the proposed acquisition of Central Vermont Public Service Corporation ("CVPS") by a subsidiary of Gaz Métro Limited Partnership ("Gaz Métro"), the subsequent merger of CVPS and Green Mountain Power Corporation ("GMP"), and other related transactions (collectively, the "Proposed Transaction").[1] In this Order, the Vermont Public Service Board ("Board") finds, on balance, that the Proposed Transaction will promote the public good and will not obstruct or prevent competition in Vermont's electric utility sector. Therefore, the Board approves the Proposed Transaction, subject to conditions.

The Proposed Transaction represents an historic opportunity to achieve significant, immediate and enduring benefits for all retail customers of CVPS and GMP, Vermont's two largest electric utilities. The Petitioners[2] have guaranteed a portion of these benefits, which ensures that customers of GMP and CVPS will receive at least $144 million of direct rate benefits as a result of the merger of these two utilities, with $15.5 million of these guaranteed benefits provided during the first three years after the merger. Beginning in the ninth year after the merger, customers will receive the benefit of all merger savings. If the projected operational savings are realized and endure, ratepayers will benefit for decades into the future from electric rates that will be at least 5.82 percent lower than they otherwise would be.

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1. The Proposed Transaction encompasses the following elements: (1) the acquisition by Gaz Métro, through Northern New England Energy Corporation ("NNEEC"), of all the common stock of CVPS by the merger of Danaus Vermont Corp. ("Danaus") into and with CVPS; (2) the acquisition by Vermont Low Income Trust for Electricity, Inc. ("VLITE") of controlling interests in Vermont Electric Power Company, Inc. ("VELCO"), Vermont Transco LLC ("VT Transco"), and Vermont Electric Transmission Company, Inc. ("VETCO") through the transfer by CVPS of VELCO common stock to VLITE; (3) the subsequent merger of CVPS into and with GMP; and (5) certain related transactions, acquisitions of controlling interests, governance document amendments, and proposals as described in the findings of this Order. VELCO, VT Transco and VETCO are collectively referred to herein as the "VELCO Companies;" the term "VELCO" is used at times in this Order to jointly refer to VELCO and VT Transco, unless the context makes clear that VELCO and VT Transco are being discussed as separate entities. Depending on the context, the term "Proposed Transaction" should be understood to include or not include, as warranted, the terms of the various settlements that some of the parties have entered into with the Petitioners and that are discussed in greater detail in the findings and throughout the Order.

2. The Petitioners consist of: CVPS; GMP; Gaz Métro; Gaz Métro inc. ("GMi"); VLITE; Danaus; and NNEEC for itself and as agent for Valener Inc. ("Valener"), Noverco, Inc. ("Noverco"), Caisse de dépôt et placement du Québec (the "Caisse"), Capital d'Amérique CDPQ Inc. ("CDA"), Trencap L.P. ("Trencap"), Enbridge Inc. ("Enbridge"), and IPL System Inc ("IPL").

These benefits are achievable only through an acquisition of CVPS by Gaz Métro, the owner of GMP. No other purchaser could provide value to CVPS ratepayers on this scale because no other purchaser is able to merge CVPS and GMP into one regulated utility (the "Combined Company").[3] At present, retail customers pay electric rates that reflect substantial duplication in costs and functions for these two utilities. The proposed consolidation is an unprecedented opportunity to create operational efficiencies that will significantly benefit electric customers and the state of Vermont.

Among the most important considerations for the Board in approving the Proposed Transaction are the following:

- the material and enduring nature of the benefits that are likely to flow to customers and the state from combining CVPS and GMP;
- the $144 million of guaranteed rate benefits, $15.5 million of which will be delivered in the first three years after the merger, that customers will receive;
- the transfer to VLITE of most VELCO voting securities currently owned by CVPS to foreclose GMP from exercising majority control over Vermont's transmission system after the merger;
- the unique opportunity presented by Gaz Métro's acquisition of CVPS to consolidate the service territories of Vermont's two largest, investor-owned electric utilities;
- the significant up-front costs of the acquisition for Gaz Métro;
- the significant risk of endangering the Proposed Transaction and jeopardizing the extraordinary benefits of a combination of CVPS and GMP that would result if the Board were to substantially change the economic terms of the acquisition and merger; and
- the State's familiarity with Gaz Métro as a result of its long tenure as a fair partner and an owner of one or more Vermont utilities.

Notably, no party opposed the merger in principle, although some did oppose certain aspects of the Proposed Transaction. Several parties reached settlement agreements with the Petitioners that increased or clarified the benefits to be provided to ratepayers and other entities as a result of the Proposed Transaction. The most comprehensive of these agreements is between

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3. Because GMP will be the surviving corporation after the merger of CVPS and GMP, the Combined Company, as the context warrants, is sometimes referred to in this Order as GMP.

the Vermont Department of Public Service ("DPS" or "Department") and the Petitioners (referred to herein as the "DPS MOU"). Among other items, the DPS MOU guarantees that ratepayers will receive immediate significant rate benefits; these guaranteed immediate savings benefit ratepayers and are an improvement over the Petitioners' original proposal.

The DPS MOU also improves the Petitioners' proposal for preventing the Combined Company from exercising majority shareholder control over VELCO and VT Transco. A significant ownership interest in VELCO will be transferred by CVPS to VLITE, a public benefit, nonprofit corporation. As an owner of VELCO, VLITE will have the power to nominate three independent directors to serve on VELCO's board of directors. VLITE itself will be governed by a board of directors drawn from representatives of the energy, utility and public-interest sectors. Furthermore, VLITE will use its dividend income from VELCO — estimated at $1 million per year — to fund projects and initiatives that further the energy policies of the State of Vermont. The DPS MOU further ensures that the Combined Company will have no ability to unilaterally remove VELCO as the manager of VT Transco, the owner of Vermont's transmission infrastructure assets.

The DPS MOU further sets out a windfall-recovery mechanism to address the Board's Order in Dockets 6460/6120 to prevent the unjust enrichment of CVPS shareholders through a future sale or merger of CVPS.[4] This component of the DPS MOU — known as the Community Energy and Efficiency Development Fund ("CEED Fund") — enhances the proposal put forth by the Petitioners. The CEED Fund is substantially similar to the GMP Efficiency Fund, which is

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4. The Board's Order in Dockets 6460/6120 and the Board's Orders in Docket 6107 and Docket 7213 (regarding GMP) respectively refer to a windfall-sharing mechanism. However, to prevent potential confusion between sharing of windfall profits and sharing of merger savings, in this Order we refer to the windfall-sharing mechanism as the "windfall-recovery mechanism." *See generally* Docket 6107, *Tariff filing of Green Mountain Power Corporation requestion a 12.9% rate increase*, to take effect on June 22, 1998, Order of 1/23/01 (the "Docket 6107 Order"); Docket 6460/6120, *Tariff filing of Central Vermont Public Service Corporation requesting a 7.6% rate increase, to take effect December 24, 2000, and Tariff filing of Central Vermont Public Service Corporation requesting a 12.9% rate increase, to take effect July 27, 1998*, Order of 6/26/01 (the "Dockets 6460/6120 Order"); Docket 7213, *Joint Petition of Green Mountain Power Corporation, Northern New England Energy Corporation (NNEEC), as subsidiary of Gaz Metro of Québec, and North stars Merger Subsidiary Corporation (North stars) for approval of: (1) the merger of North stars into and with Green Mountain Power; (2) the acquisition by NNEEC of the common stock of Green Mountain Power; and (3) the amendment to Green Mountain Power's Articles of Incorporation*, Order of 3/26/07 (the "Docket 7213 Order").

the windfall-recovery mechanism that the Board accepted in 2007 in satisfaction of nearly identical windfall-recovery terms.[5] When the Board approved the GMP Efficiency Fund as part of Gaz Métro's acquisition of GMP in 2007, the Board expressly ruled that the previously-established windfall-recovery provisions did not require GMP to refund the money directly to customers through bill credits.[6]

Because of this 2007 precedent, both the Petitioners and the DPS had reasonable cause to believe that the Board would find the CEED Fund to be an acceptable means of providing windfall recovery in the context of the Proposed Transaction. Rejecting the CEED Fund or requiring either CVPS's shareholders or Gaz Métro to bear the expense of providing the windfall recovery to CVPS ratepayers through a one-time cash refund or bill credit would put at risk all the extraordinary actual and potential benefits of the merger for ratepayers and the citizens of Vermont.

Given that CVPS's common stock is publicly traded on the New York Stock Exchange, no practical mechanism exists at this point "to prevent the unjust enrichment" of CVPS's shareholders from the sale of the company. If the Board were to approve the Proposed Transaction on the condition that these stockholders share their substantial windfall from the sale with CVPS ratepayers, this would seriously jeopardize the opportunity for a combination of CVPS and GMP and the much greater economic benefits to CVPS and GMP ratepayers. Any reduction in the sale price and proceeds would at minimum require a new solicitation and vote of CVPS's shareholders who might not approve a lower price for their shares. It also would allow both CVPS and Gaz Métro to reconsider the sale and merger and could result in the termination of the sale agreement and the re-opening of the bidding process to other potential purchasers of CVPS, who would not be able to provide the benefits of a CVPS-GMP consolidation.

Accordingly, on the whole, after considering all the evidence and relevant circumstances, we find the CEED Fund to be an adequate mechanism for achieving windfall recovery, not because the Petitioners and the DPS have offered a perfect or ideal proposal, but because it is one

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5. Under both mechanisms, the windfall recovery is provided to customers through the net benefits of rate-recoverable investments in energy efficiency and other projects.

6. Docket 7213, Order of 3/26/07 at 39.

reasonable option and a negotiated term within a unique transaction that will directly deliver substantial and permanent savings to every ratepayer now served by CVPS and GMP.

While no party expressed concern with the Proposed Transaction on the grounds that the acquirer is a Canadian company, we received many comments from the public expressing the desirability of Vermont-ownership for Vermont utilities. We took care to examine this issue closely in our proceedings. Because CVPS is a publicly-traded company, the identity and residence of most of CVPS's owners is unknown; however, there is no doubt that the largest owners of CVPS are not Vermont residents.[7] That said, the physical location of CVPS's owners is not as critical as ensuring that the focus and management of our utilities remains based in Vermont. Approval of the Proposed Transaction serves this goal. Gaz Métro has a demonstrated record of allowing both GMP and Vermont Gas Systems, Inc. ("Vermont Gas") the managerial and operational autonomy of stand-alone, Vermont-based companies. In this proceeding Gaz Métro has committed to managing the Combined Company in this same manner. Furthermore, the terms of the DPS MOU ensure that the Combined Company will not be able to exercise majority shareholder control over Vermont's transmission system.

The direct benefits to all customers of the Combined Company ultimately resulting from the merger of CVPS and GMP have been clearly established in this proceeding. Although the anticipated synergies from corporate mergers often prove to be overly optimistic, the Petitioners, in this case, have guaranteed $144 million of such synergistic savings to the customers of the Combined Company. This guarantee is unprecedented in Vermont utility regulation and reflects the high degree of confidence the Petitioners have that these savings actually exist and will be attained, even without laying off any non-executive employees. To this end, one benefit of the Proposed Transaction's structure is that it provides the Combined Company with strong incentives to achieve the projected savings; if the savings are not achieved, then the Combined Company will, nonetheless, be obliged to provide guaranteed benefits to customers through bill credits.

In sum, the evidence before the Board in this proceeding persuasively demonstrates that the approval of the proposed acquisition of CVPS, the subsequent merger of CVPS and GMP

7. Exh. Pet-Cross-14 (Proxy Statement at 83).

and the other related transactions, as described and subject to the conditions in this Order, will promote the public good and will not obstruct or prevent competition.

II. Procedural History

On September 2, 2011, the Petitioners filed a petition seeking Board approval of the Proposed Transaction pursuant to 30 V.S.A. §§ 104, 107, 109, and 311.

On September 9, 2011, the Clerk of the Board issued a notice of a prehearing conference for September 21, 2011. The Clerk also issued a memorandum seeking clarification from the Petitioners as to why Gaz Métro and other entities should not be included among the formal petitioners seeking regulatory approval in Vermont for the Proposed Transaction.

On September 21, 2011, AARP filed a motion to intervene. Later that day, the Board convened a prehearing conference during which the Board granted AARP's motion to intervene.

On September 22, 2011, the Clerk of the Board issued a memorandum concerning questions to be addressed by the parties during an anticipated workshop.

On September 26, 2011, International Business Machines Corporation ("IBM") filed a motion to intervene.

On September 27, 2011, the Board issued a Prehearing Conference Memorandum and Scheduling Order setting forth a schedule for the proceeding. That same day, the Petitioners filed a motion for a protective order and protective agreement providing for confidential treatment of information to be produced during discovery in this proceeding.

On September 28, 2011, the Petitioners filed an amended petition (the "Amended Petition") to include Gaz Métro and GMi as direct petitioners (rather than through NNEEC as agent), and Certifications under 30 V.S.A. § 107 on behalf of other upstream owners of NNEEC relating to the Board's jurisdiction and the authority of NNEEC to act as agent for the upstream owners.

On September 30, 2011, Omya, Inc. ("Omya") filed a motion to intervene.

On October 3, 2011, the Board issued a revised scheduling order and a notice of a workshop scheduled for October 14, 2011. Also on that day, International Brotherhood of Electrical Workers, Local Union 300 ("IBEW") filed a motion to intervene.

On October 7, 2011, Vermont Public Power Supply Authority ("VPPSA") filed a motion to intervene.

On October 11, 2011, the Clerk of the Board issued a notice of a public hearing to be convened on November 1, 2011.

On October 12, 2011, the City of Burlington Electric Department ("BED") filed a motion to intervene.

On October 13, 2011, VELCO filed a motion to intervene.

On October 14, 2011, Board staff conducted a workshop to clarify the nature of the Proposed Transaction and related legal and policy considerations. Also that day, a motion to intervene was filed by Vermont Electric Cooperative, Inc. ("VEC").

On October 17, 2011, a motion to intervene was filed by a group of 46 Vermont residents and ratepayers ("Group of 46 Ratepayers"). The Group of 46 Ratepayers also filed a petition for the appointment of independent counsel to represent the public. In due course, the Department, Petitioners, VELCO and VPPSA filed responses opposing the Group of 46 Ratepayers' petition. The Board received no responses from any party supporting the petition. On November 7, 2011, the Group of 46 Ratepayers filed a letter that effectively withdrew its petition.[8]

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8. On November 14, 2011, the Board issued a procedural order stating that the Group of 46 Ratepayers could file a new motion requesting that the Board appoint independent counsel after the group had an opportunity to review the position of the Department on the Proposed Transaction. Since then, the Group of 46 Ratepayers has not filed such a motion. On November 29, 2011, a sub-set of the members of the Group of 46 Ratepayers attempted to file a motion to alter the Board's November 14th procedural order. On December 9, 2011, the Board issued an Order rejecting this filing as procedurally defective because it was not made by Vincent Illuzii, an attorney licensed to practice in Vermont whom the Board had acknowledged for purposes of this Docket to be the legal representative of the Group of 46 Ratepayers. Docket 7770, Order of 12/9/11 at 2. *See also* Docket 7770, Order of 11/1/11 at 10 (Board expects "that all actions of the Group of 46 Ratepayers as a party to this proceeding will be coordinated through Mr. Illuzzi or counsel designated by him.")

On January 20, 2012, Mr. Illuzzi filed a request to withdraw from representing the Group of 46 Ratepayers. On January 30, 2012, the Board issued an Order indicating it would grant Mr. Illuzzi's withdrawal request only if another attorney entered an appearance on behalf of the Group. Since then, no other appearance has been entered on behalf of the Group of 46 Ratepayers, nor did the group appear at any of the technical hearings or file any briefs in this proceeding. As no clarification was forthcoming from the Group of 46 Ratepayers regarding its intent to pursue its positions any further in this proceeding, the Board took the precautionary step of admitting into the record the direct and rebuttal testimony filed by Mr. Illuzzi.

Also on October 17, 2011, motions to intervene were filed by Renewable Energy Vermont ("REV"), the Town of Stowe Electric Department ("SED"), Washington Electric Cooperative, Inc. ("WEC"), and Associated Industries of Vermont ("AIV").

On October 18, 2011, motions to intervene were filed by Ampersand Gilman Energy LLC and its affiliates, Ampersand Energy Partners LLC, Ampersand Gilman Hydro LP, Ampersand Gilman Biomass LLC and Ampersand Gilman Site Optimization LLC ("Ampersand"), the City of Rutland ("Rutland") and Vermont Public Interest Research Group ("VPIRG").

On October 20, 2011, the Board issued a protective order providing for the confidential treatment of information to be produced during discovery in this proceeding.

On October 27, 2011, the Department filed a motion to modify the procedural schedule issued on October 3, 2011. With the exception of the Petitioners, no party opposed the Department's motion.

On November 1, 2011, the Board granted the intervention motions of the following entities: IBM; Omya; IBEW; VPPSA; Ski Vermont; BED; VELCO; VEC; WEC; SED; AIV; REV; Group of 46 Ratepayers; Rutland; VPIRG; and Ampersand. Later that day, the Board held a public hearing via Vermont Interactive Television at fourteen locations. The twelve members of the public who spoke were equally divided in their support of, and opposition to, the Proposed Transaction.

On November 4, 2011, the Board issued a revised scheduling order substantially granting the changes requested by the Department on October 27, 2011.

On December 6, 2011, SED filed a motion to amend the procedural schedule issued on November 4, 2011. With the exception of the Petitioners, no party opposed SED's motion.

On December 16, 2011, the Board issued a revised scheduling order substantially granting the changes requested by SED on December 6, 2011.

On December 20, 2011, VPIRG filed a letter commenting on the substance of the Proposed Transaction.[9]

On March 19, 2012, the Clerk of the Board issued a memorandum requesting additional information from the parties. Petitioners filed written responses to the Board's questions on

9. VPIRG did not file formal testimony in this case.

March 23, 2012, and March 27, 2012, and the Department filed written responses on March 27, 2012.[10] IBM and BED provided live testimony in response to the Board's questions during technical hearings.

Also on March 19, 2012, AARP filed a motion *in limine* to bar the Petitioners from filing additional testimony regarding the quantification of certain CEED Fund benefits for ratepayers, and, in the alternative, a motion to compel supplemental testimony from Petitioners' witness John Plunkett. That same day, Petitioners filed a reply opposing both AARP motions and further seeking a protective order. As a provisional response to AARP's request for relief, the Board granted counsel for AARP an opportunity during the technical hearings to question Mr. Plunkett regarding the substantive matters at issue in AARP's two motions. Thereafter, AARP did not pursue any further ruling on either motion.

The Board conducted technical hearings on March 21-22, 26-29, and April 3-4, 2012.

The following Memoranda of Understanding ("MOUs") were entered into evidence during the technical hearings:

(1) An agreement dated January 13, 2012, between GMP and VEC (the "VEC MOU");

(2) An agreement dated January 19, 2012, between the Petitioners and Rutland (the "Rutland MOU");

(3) An agreement dated March 5, 2012, between the Petitioners and AIV ("AIV MOU");

(4) the DPS MOU;

(5) An agreement dated April 3, 2012, between the Petitioners, IBM, and the Department ("IBM MOU").

The substance of these MOUs is described later in this Order.

On March 22, 2012, WEC filed a motion to compel discovery from VELCO. On March 26, 2012, VELCO filed a response opposing WEC's motion. In due course, WEC withdrew this discovery motion on the record during the technical hearing.

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10. All of these written responses were admitted into the evidentiary record without objection during the technical hearings.

On April 6, 2012, the Petitioners filed written responses to record requests made by the Board during the technical hearings.[11]

On April 23, 2012, direct briefs were filed by all parties except the Group of 46 Ratepayers, AIV, IBEW, REV, VPIRG, Ampersand and Ski Vermont.

On May 2, 2012, the Petitioners made an informational filing regarding the status of negotiations of certain agreements between several parties in order to resolve certain VELCO governance issues (the "Informational Filing").

On May 4, 2012, reply briefs were filed by all parties except Group of 46 Ratepayers, Rutland, Omya, AIV, IBEW, REV, VPIRG, Ampersand and Ski Vermont.

Also on May 4, 2012, SED filed a motion objecting to the admission into evidence of certain documents relating to the Informational Filing, as well as seeking to strike any references in the parties' proposed findings of fact and briefs regarding the Informational Filing (the "SED Motion to Strike"). VELCO, VEC and the Petitioners filed responses opposing the SED Motion to Strike. On May 22, 2012, the Board issued an order denying the SED Motion to Strike.[12]

On May 17, 2012, AARP filed a request for leave to file a sur-reply in response to an argument raised by the Department in its reply brief. On May 16, 2012, the Department filed a letter stating that it was withdrawing the argument to which AARP wished to respond. On May 22, 2012, the Board issued an Order declaring AARP's request to file a sur-reply to be moot.

Also on May 17, 2012, the Petitioners filed a motion for leave to file a sur-reply to arguments made by AARP in its reply brief. On May 22, 2012, the Board denied the Petitioners' request for leave to file a sur-reply as untimely.[13]

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11. On April 3, 2012, the Petitioners asked the remaining parties to advise whether there would be any objection to admitting these responses into the evidentiary record. To date, no party has raised any such objection. Accordingly, we hereby admit these responses into evidence and identify them for the record as Exhibit Board-13.

12. To date, no party has moved at any time for the admission into evidence of the Informational Filing, nor has the Board otherwise admitted the Informational Filing into the evidentiary record.

13. As part of the Petitioners' filing on May 17, 2012, a sur-reply brief was included which the Board did not consider in light of its decision to deny the Petitioners' motion for leave to file a sur-reply.

A. Testimony in the Record

The prefiled direct and rebuttal testimony (including attached exhibits) of the following witnesses was admitted into evidence during the technical hearing in this proceeding:

Petitioners: Mary Powell and Larry Reilly (jointly); Pierre Despars (direct only); Dawn Bugbee; John Plunkett; Robert Griffin; Brian Otley; Robert Hevert (rebuttal only).

DPS: Asa Hopkins; Sean Foley (direct only); John Wilson; Michael Dworkin.

VELCO: Christopher Dutton; Nora Brownell.

VEC: Jeffrey Wright (direct only); David Hallquist.

BED: Ken Nolan.

SED: Ellen Burt.

WEC: Avram Patt; Thomas Kandel.

VPPSA: David Mullet (direct only).

AARP: Peter Bradford and Richard Silkman (jointly).

Rutland: Mayor Michael Louras.

Omya: Todd Allard (direct only).

IBM: Michael Gorman; Alan Rosenberg (direct only).

Ampersand: A. J. Goulding.

AIV: William Driscoll (direct only).

IBEW: Jeffrey Wimette (direct only).

Group of 46 Ratepayers: Vincent Illuzzi.

III. Positions of the Parties

A. The Petitioners

The Petitioners contend that the Proposed Transaction will promote the public good for the following reasons:

- The Proposed Transaction will merge the adjoining service territories of GMP and CVPS, thereby facilitating improved customer service and reliability.
- The Petitioners project that the Proposed Transaction will result in customer savings of as much as $500 million over the next twenty years. GMP will guarantee a minimum of $144 million in customer operations

and maintenance ("O&M") cost savings alone over the first ten years. In realizing these savings, the Petitioners will rely on retirements and natural turnover to save labor costs, as opposed to layoffs (other than executive officers) and mandatory relocations.

- The Combined Company will maintain a significant business and community presence in the Rutland area, as did CVPS.
- The Petitioners will create the CEED Fund, which will deliver at least $25 million in benefits to customers in the former CVPS service territory.
- The Petitioners have created VLITE as a public benefit entity and propose to convey to VLITE a significant ownership interest in VELCO in order to prevent GMP from controlling the VELCO Companies unilaterally after merging with CVPS. Petitioners further propose that VLITE will participate in the governance of VELCO and will invest the dividends from its VELCO stock in a manner consistent with State policy on energy issues.

Finally, the Petitioners maintain that the Proposed Transaction will not impair competition in Vermont's electric utility market.

B. The Department

The Department maintains that the Proposed Transaction will promote the general good of the State and should be approved, subject to the conditions agreed upon in the DPS MOU. The Department contends that the DPS MOU satisfies its concerns about the Proposed Transaction by (1) requiring increased public participation in VELCO through VLITE, and (2) requiring that customers share more immediately in the savings than originally proposed and that they receive greater efficiency benefits under the windfall-recovery mechanism. The DPS MOU also requires a more rigorous reliability standard for customer outage duration in the Combined Company's Service Quality and Reliability Performance, Monitoring and Reporting Plan ("Service Quality Plan"). The DPS MOU further contains measures designed to ensure GMP's financial integrity; it also requires changes to the GMP and CVPS Alternative Regulation Plans ("GMP Alt Reg Plan" and "CVPS Alt Reg Plan," respectively), and includes provisions relating to tariff and rate integration.

C. VELCO

VELCO takes no position on whether the Board should approve the Proposed Transaction.[14] VELCO appeared in this proceeding to ensure that any changes to VELCO's governance structure necessitated by the Proposed Transaction would not impair VELCO's ability to provide efficient and cost-effective electric transmission service consistent with its legal obligations. VELCO urges that any changes to its governance structure be narrowly tailored to address the concern regarding the control of VELCO that arises from the Proposed Transaction — the transformation of GMP into a majority shareholder which potentially could obstruct or diminish the rights of other VELCO shareholders and VT Transco members.

D. BED

BED does not oppose the Proposed Transaction, but wants to ensure that it does not undermine BED's competitive position relative to GMP. BED requests that the Combined Company be required to amend the decisional voting mechanism of the Agreement for Joint Ownership, Construction and Operation of the Highgate Transmission Interconnection ("Highgate Agreement") so that greater operational control may be exercised by smaller utilities that do not own transmission assets. Specifically, BED believes an amendment to the Highgate Agreement is needed that will require all major decisions to be approved by at least three owners (as opposed to only two) representing a majority of ownership shares in Highgate. Finally, BED supports the changes to VELCO's governance structure proposed in the DPS MOU, provided that steps are taken to avoid the politicization of the VELCO board of directors.

E. VPPSA

VPPSA takes no position on whether the Board should approve the Proposed Transaction. VPPSA agrees with BED that, as a result of the Proposed Transaction, there is a need to amend the Highgate Agreement. VPPSA reports that, contingent upon the approval of the Proposed Transaction, one of its members — the Village of Hyde Park Electric Department ("Hyde Park") — and GMP have agreed to negotiate in good faith to request Board approval to

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14. VELCO's Chief Executive Officer testified as to his personal support for the Proposed Transaction.

terminate a 3-Phase Service Agreement between Hyde Park and CVPS. VPPSA also submits that it has sought and obtained the assurance of GMP that its members' existing agreements, understandings, and procedures with GMP and CVPS will remain in place and will not be changed or terminated without notice and an opportunity to negotiate. VPPSA also suggests that issues relating to VELCO governance could be addressed by limiting the power of GMP with respect to voting and the designation of independent directors.

F. VEC

VEC does not take a position on whether the Board should approve the Proposed Transaction. VEC requests that the Board approve the VEC MOU, which addresses reliability issues concerning certain CVPS transmission facilities between Irasburg and East Fairfax within VEC's service territory. VEC supports the changes to VELCO's governance structure proposed in the DPS MOU.

G. WEC

WEC takes no position on whether the Board should approve the Proposed Transaction. WEC generally supports the changes to VELCO's governance structure proposed in the DPS MOU, subject to a clarifying condition concerning how certain VELCO directors will be nominated by the municipal and cooperative electric distribution utilities. WEC further requests that the Board condition its approval of the Proposed Transaction by requiring GMP to institute measures that would hold WEC harmless from any increase in transmission rates above the level at which WEC's transmission rates would have remained under a stand-alone GMP transmission revenue requirement.

H. Omya

Omya does not oppose the Proposed Transaction. Omya believes the Proposed Transaction presents the potential for substantial efficiency gains and savings. Omya expresses concern that the Proposed Transaction may affect its ability to remain on CVPS's Rate 5 for the next six years — an agreement that Omya reached with CVPS in 2011.

I. SED

SED does not take a position on whether the Board should approve the Proposed Transaction. On the issue of how to structure VELCO's governance, SED proposes a seven-member board of directors with one representative from each of the following: GMP; VPPSA; BED; SED; VEC; WEC; and the Chief Executive Officer of VELCO. SED also proposes to implement staggered terms and term limits for VELCO Board members. SED opposes the creation of VLITE and the addition of public-interest directors to the VELCO Board.

J. AARP

AARP does not oppose the Proposed Transaction as a whole. Rather, AARP challenges the Petitioners' proposal to create the CEED Fund as an acceptable means of satisfying the terms of the Dockets 6460/6120 Order. AARP insists that under the terms of that Order, CVPS's shareholders are required to provide an up-front payment to customers in the event CVPS is sold. It also criticizes various aspects of the Petitioners' proposed CEED Fund, in particular (1) the proposed use of the CEED Fund to implement thermal-efficiency[15] measures that do not benefit the electric system, thereby compelling electric ratepayers to subsidize weatherization services that are not related to the provisioning of electric service; and (2) ratepayer-funding of the CEED Fund.

K. IBEW

IBEW does not oppose the Proposed Transaction, but requests that the Board consider the impact on its members in its assessment of the public good.

L. AIV

AIV supports the Proposed Transaction, pursuant to the conditions set forth in the AIV MOU. With regard to the issue of restructuring VELCO's governance, AIV favors only those changes to the make-up of the VELCO Board that will result in other utilities serving as

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15. In this Order, we use the term thermal efficiency to refer solely to unregulated thermal efficiency. That is, in this Order, we are not referring to natural gas efficiency when we use this term.

directors. AIV does not support the proposed use of VELCO dividends to finance low-income ratepayer assistance programs.

M. City of Rutland

Rutland supports the Proposed Transaction, based on the Rutland MOU. According to Rutland, the Rutland MOU confirms GMP's commitments to the Rutland area. Rutland asks that the terms of the MOU become conditions of approval of the Proposed Transaction.

N. IBM

IBM believes that the Proposed Transaction will benefit the State and electric customers, subject to certain commitments set forth in the DPS MOU and the IBM MOU. According to IBM, its specific concerns have been allayed by terms in the IBM MOU that: (1) require that any deficiency in the $144 million guarantee be returned to customers as a bill credit; (2) restrict GMP's ability to write loans to non-regulated affiliates; (3) require retention of GMP's Transmission Service Rate as a separate rate class and address cost distinctions concerning the rate in any class-cost-of-service study; and (4) require GMP to request re-authorization of the so-called GMP Virtual Choice Plan.

O. Ampersand

Ampersand does not oppose the Proposed Transaction, but testified as to concerns about its impact on rates, and the alleged increase in GMP's monopsony buying power. Ampersand recommends that the Board impose measures to address its concerns, including a rate freeze pending a cost-of-service review, an examination of GMP's cost of capital, a requirement that GMP competitively procure all future generation needs, and a modification of GMP's Alt Reg Plan to increase operational efficiency targets and binding performance standards.

P. Group of 46 Ratepayers

The Group of 46 Ratepayers does not take a position on whether the Proposed Transaction should be approved. It expresses concern that Gaz Métro could obtain control over

Vermont's transmission network as a result of the Proposed Transaction. The Group of 46 Ratepayers makes recommendations regarding the VELCO governance structure and advocates for thermal efficiency investments under the proposed CEED Fund.

Q. VPIRG

VPIRG supports the Proposed Transaction. In public comments, VPIRG has requested that the Board require that a minimum of one-third of VELCO Board and executive committee seats be held by representatives of the public, and that at least half of those seats be held by consumer advocates. VPIRG also requests that public members of the VELCO Board be nominated and selected by an independent, public process. Finally, VPIRG urges that VELCO's bylaws be amended to require it to act in the public interest and in support of distributed generation and renewable energy.

R. Ski Vermont

Ski Vermont intervened in this proceeding but did not file testimony or appear at technical hearings.

S. REV

REV intervened in this proceeding but did not file testimony or appear at technical hearings.

IV. Comments of the Public

We have received an unusually large number of public comments in this case. We thank the many citizens of Vermont who devoted time and attention to sharing with us their concerns regarding the Proposed Transaction. We have considered these comments very carefully. Generally speaking, the public expressed the following comments about the effects of the Proposed Transaction: the desire for the Board to order CVPS to issue $20.9 million in refunds to its customers in satisfaction of the Board's earlier order regarding windfall profit sharing; concern regarding foreign ownership of GMP by Gaz Métro, a Canadian company; the need to preserve Vermont's control of VELCO and the state's transmission network; the need to secure a stable supply of affordable power; the alleged conflict of interest of the Commissioner of the Department of Public Service in reviewing the Proposed Transaction; the loss of local control of CVPS; and the economic impact on the Rutland region that would result from the loss of CVPS jobs.

As we are bound by law to make our decisions based on a formal evidentiary record, public comments do not become part of the evidence in the case. However, these comments help raise new issues or perspectives that the Board considers. Indeed, in this case, many of the public comments did prompt us to pursue additional, detailed lines of inquiry with the parties. Our ultimate decision to approve the Proposed Transaction reflects these inquiries and is based on a robust evidentiary record that reflects several months of discovery, eight days of testimony taken under oath and cross-examined at formal technical hearings, and two rounds of briefing by the parties.

V. Standard of Review

In connection with the Proposed Transaction, Petitioners seek various approvals from the Board pursuant to 30 V.S.A. §§ 104, 107, 109 and 311. Generally, in order to approve the Proposed Transaction, we must find that the Proposed Transaction promotes the public or general good and will not impair competition.

Section 104 applies to the proposed amendment of the articles of association of CVPS that is a part of the Proposed Transaction and requires that the Board find that the proposed amendment will promote the general good of the state. Section 107 relates to the proposed acquisitions of controlling interests that are part of the Proposed Transaction and states, in relevant part, that:

> No company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the public service board, or in any company which, directly or indirectly has a controlling interest in such a company, without the approval of the public service board. . . . The board may grant such approval only after due notice and opportunity for hearing and upon finding that such an acquisition will promote the public good.

Section 109 relates to the proposed mergers that are part of the Proposed Transaction and provides, in relevant part, that:

> A corporation or a foreign corporation subject to the jurisdiction of the public service board, shall not . . . merge nor consolidate . . . , except after opportunity for hearing by the public service board and a finding by such board that the same will promote the general good of the state.

Section 311 also applies to such proposed mergers and states that:

> A consolidation or merger under the provisions of this chapter shall not become effective without the approval of the public service board after due notice and opportunity for hearing, and the finding on its part that such consolidation or merger will not result in obstructing or preventing competition in the purchase or sale of any product, service or commodity, in the sale, purchase or manufacture of which such corporations are engaged.

The various acquisitions of controlling interests that are part of the Proposed Transaction will involve at minimum a change in the ownership of CVPS, VELCO and certain other companies subject to the Board's jurisdiction. The merger of CVPS and GMP into the Combined Company will cause significant changes in operations and management upon their merger and the consolidation of their respective service territories. In past acquisitions of controlling interests, mergers and consolidations of service territories, the Board has applied a variety of criteria, as appropriate to the circumstances, in order to determine whether the proposed transaction promoted the public or general good.[16]

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16. *See* Docket 7213 Order at 9-10; Docket 6150*, Joint Petition of Bell Atlantic Corp. and GTE Corp. for approval of Agreement and Plan of Merger*, Order of 9/13/99 at 48–49; Docket 5900, *Joint Petition of New England Telephone & Telegraph Co. and Bell Atlantic Corp. for Approval of a Merger*, Order of 2/26/97 at 5-9; Docket 7404, *Petition of Entergy Nuclear Vermont Yankee and Entergy Nuclear Operations for approval of an indirect transfer of control*, Order of 6/24/10 at 6-8; Docket 7210, *Joint petition of Central Vermont Public Service Corporation and Vermont Electric Cooperative for approval of the transfer of assets of VEC's Southern District territory to CVPS*, Order of 12/4/06 at 9-11; Docket 6850, *Joint Petition of Citizens Communications Company to sell, and Vermont Electric Cooperative to purchase Citizens' distribution assets and a portion of its transmission assets*, Order of 3/1/04 (as reissued 3/29/04) at 13, 14, 16, 17, 22, 23, & 27; Docket 7660, *Joint Petition of Vermont Marble Power Division of Omya Inc.,* Order of 6/10/11 at 36-37; Docket 7734, *Petition of Northern New England Energy Corporation for approval of an Indirect Transfer of Control of Vermont Gas Systems, Inc. and Green Mountain Power Corporation*, Order of 6/10/11at 6-7; Docket No. 7688, *Joint Petition of Central Vermont Public Service Corporation and the Town of Readsboro for approval of the acquisition by CVPS of the Town of Readsboro Electric Light Department's distribution system assets and service territory*, Order of 7/8/11 at 6-7.

For a prospective direct or indirect owner, manager or operator of a business subject to the Board's jurisdiction, we apply certain suitability standards, which involve, as appropriate, assessments of technical and managerial competence, of financial strength and soundness, and of matters related to reputation and conduct (often stated as whether the owner, manager or operator will be a fair partner for Vermont). In a merger of utilities or other transactions that will result in a consolidation of service territories, we make additional determinations as to the suitability of the parties and the surviving corporation and as to the compatibility of their respective service territories.

In any acquisition or merger subject to our approval, we evaluate the effects of the proposed transaction on customers. In particular, we assess whether the proposed transaction will create efficiencies that will benefit customers and review the overall potential impact of the proposed transaction on rates, reliability of service and service quality. We also consider the effect on employees, the effects on competition, and, as appropriate, the consistency of the proposed transaction with the Vermont Electric Plan.

Our evaluation of a particular transaction proposal may apply additional criteria and assess other effects depending on the specifics of the proposal, relevant circumstances and issues raised during the proceeding. When, as is the case with the Proposed Transaction, a series of multiple transactions requiring Board approval are part of one interrelated and integrated proposal, we generally evaluate the separate transactions in the context of the proposal as a whole. Our evaluation of all relevant considerations is directed toward the fundamental purpose underlying the applicable statutes – ensuring that the Proposed Transaction will promote the public good and the general good of the state.[17]

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17. The Docket 7213 Order at 9-10.

VI. Findings

A. The Petitioners

1. CVPS

1. CVPS is the largest electric utility in Vermont. It provides electric service to approximately 160,000 customers, and its 2010 retail rate revenues were approximately $294.2 million. Powell-Reilly pf. at 4 (Reilly); exh. Pet.-RJG-2.

2. CVPS owns in-state generation plants with a capacity of more than 90 MW. These generation plants include 24 hydroelectric plants with a combined capacity of more than 63 MW, two gas turbines with a combined capacity of 26.5 MW, and a currently inactive, diesel-peaking unit with 2.4 MW of capacity. Powell-Reilly pf. at 4 and 6 (Reilly); tr. 3/21/12 at 157 (Reilly).

3. The service territory of CVPS includes much of central and southern Vermont, along with areas in northwestern and northeastern Vermont. Powell-Reilly pf. at 4 (Reilly).

4. CVPS has 532 employees. Exh. Pet.-Cross-14 at Attachment 11(a).

5. CVPS owns approximately 48.5 percent of VELCO, which is the managing member of VT Transco. Powell-Reilly pf. at 18 and 20-21.

6. CVPS owns approximately 41.2 percent of VT Transco, the entity that owns the assets of the Vermont transmission system and that is managed by VELCO. Powell-Reilly pf. at 18-19 (Reilly); Dworkin pf. at 9.

7. CVPS owns more than 10 percent of Vermont Yankee Nuclear Power Corporation ("VYNPC") and VETCO. Powell-Reilly pf. at 18 (Reilly).

8. The common stock of CVPS is registered under the Securities Exchange Act of 1934, as amended, and is listed and publicly traded on the New York Stock Exchange. Exh. Pet.-Cross-14 (Proxy Statement at 6 and 14).

9. In 2010, CVPS generated about $146.8 million of revenue from approximately 154,400 residential customers, about $111.2 million from approximately 24,400 commercial customers, and about $36.1 million from 35 industrial customers. CVPS's revenue per kWh in 2010 was approximately $ 0.133. Exh. Pet.-RJG-2.

10. In 2011, CVPS acquired most of the assets of the Vermont Marble Power Division ("VMPD") of Omya and of the Village of Readsboro Electric Department. Hopkins pf. at 7; exh. Pet.-BO-1; Docket 7660, Order of 6/10/11; Docket 7688, Order of 7/8/11.

11. In Docket 7660, the Board found that CVPS's acquisition of VMPD was expected to increase CVPS's annual retail revenues by approximately $17 million. Docket 7660, Order of 6/10/11 at 34 (finding 124).

2. GMP

12. GMP provides electric service to approximately 96,000 customers across Vermont and its 2010 retail rate revenues were approximately $237.9 million. Powell-Reilly pf. at 4 (Powell); exh. Pet.-RJG-2.

13. GMP owns or controls approximately 125 MW of generation. GMP owns and operates eight hydroelectric generating plants in Vermont, operates a 6 MW wind-power facility in Searsburg, Vermont, and has secured permits for a 63 MW wind facility in Lowell, Vermont, which is scheduled to begin operation by December 2012. GMP purchases approximately 240 MW of generation capacity under long-term power purchase agreements. Powell-Reilly pf. at 4 (Powell).

14. The principal portion of GMP's service territory is located in the northwestern and central regions of Vermont but its service territory also encompasses five separate, discrete areas along the Connecticut River and one in south central Vermont. Exh. Pet.-BO-1.

15. GMP has 206 employees. Exh. Pet.-Cross-14 at Attachment 11(a).

16. GMP owns approximately 29.5 percent of VELCO. Powell-Reilly pf. at 20-21 (Joint).

17. GMP owns approximately 31.1 percent of VT Transco. Dworkin pf. at 9.

18. GMP owns more than 10 percent of VYNPC and VETCO. Powell-Reilly pf. at 18 (Reilly).

19. In 2010, GMP generated about $90.4 million of revenue from approximately 82,600 residential customers, about $89.7 million from approximately 16,200 commercial customers, and about $57.8 million from 30 industrial customers. GMP's revenue per kWh in 2010 was approximately $ 0.124. Exh. Pet.-RJG-2.

3. NNEEC and Danaus

20. NNEEC, a wholly-owned subsidiary of Gaz Métro, is a Vermont corporation that owns all of the voting securities of GMP, Vermont Gas, Danaus and Northern New England Investment Corporation ("NEIC"), a Vermont corporation. NNEEC was formed as a holding company to own Gaz Métro's energy-company investments (through operating-company subsidiaries) in the United States. Despars pf. at 3; Amended Joint Petition at 2.

21. NNEEC also owns, through NEIC, a 38.29 percent partnership interest in Portland Natural Gas Transmission System ("PNGTS"), a Maine partnership. TransCanada Pipeline owns the remaining partnership interest in PNGTS. PNGTS owns and operates an interstate pipeline that runs between a Canadian pipeline (owned and operated by Trans Québec & Maritimes Pipeline Inc.) at a point on the U.S.-Canada border near Canaan, Vermont, and the Maritimes and Northeast Pipeline ("Maritimes and Northeast"), at Westbrook, Maine. The pipeline then continues (in a section that is jointly owned by PNGTS and Maritimes and Northeast) to the Tennessee Gas Pipeline System near Boston. Despars pf. at 3; tr. 3/21/12 at 186-187 (Despars).

22. NNEEC has five directors: Sophie Brochu, the chief executive officer ("CEO") of Gaz Métro; Robert Tessier, former CEO of Gaz Métro and current Chairman of the Board of the Caisse; William Gilbert; Nordahl Brue; and Pierre Despars, the Chief Financial Officer ("CFO") of Gaz Métro. Despars pf. at 1 and 3.

23. The officers of NNEEC are: William Gilbert as President; Donald Gilbert (the CEO of Vermont Gas) as Vice President and Secretary; Mary Powell (the CEO of GMP) as Vice President; Tim Keefe (the CFO of Vermont Gas) as Treasurer. Despars pf. at 3-4; Powell-Reilly pf. at 1 (Powell).

24. Danaus is a Vermont corporation and subsidiary of NNEEC which was formed as a corporate merger vehicle for purposes of the acquisition of CVPS. Despars pf. at 3; Amended Joint Petition at 2.

4. Gaz Métro and GMi

25. Gaz Métro, through its ownership of NNEEC, indirectly owns all the voting securities of GMP and Vermont Gas. Despars pf. at 3; Amended Joint Petition at 2.

26. Gaz Métro has indirectly owned GMP since 2007 and Vermont Gas for more than 27 years. Despars pf. at 4 and 6.

27. Gaz Métro is organized as a Québec limited partnership with GMi as its general partner. GMi, a Québec corporation, has the exclusive power to administer, manage, control and operate the business of Gaz Métro and also owns a 71 percent partnership interest in Gaz Métro (of which 70.9 percent is directly owned). Exh. GMP-1 at 2.

28. Gaz Métro, which began operations in 1957, is a Montreal-based supplier of gas service that, among other things, distributes and sells natural gas in the Province of Québec. Gaz Métro currently serves mostly urban and suburban areas of Québec but also has some significant industrial customers in rural areas. Gaz Métro has almost 180,000 customers, with a total throughput of 191.9 billion cubic feet. Gaz Métro's load is about 12 percent residential and 88 percent industrial and commercial. Despars pf. at 2; exh. GMP-1 at 2.

29. Gaz Métro is financially strong and would have the ability to support the capital needs of NNEEC's subsidiaries, including the Combined Company. Bugbee pf. at 5-6.

30. For the fiscal year ended September 30, 2011, Gaz Métro's revenues were approximately 1.96 billion Canadian dollars ("Cdn $"), and its total assets, including its indirect investments in Vermont and unregulated subsidiaries, were approximately Cdn $3.73 billion as of September 30, 2011. Net partners' equity was Cdn $1.01 billion as of September 30, 2011. Exh. GMP-2 (Attachment 2-3 at A-3 and A-5).

31. As of September 2011, Gaz Métro had generated over the prior five years annual cash flows from operations averaging Cdn $270 million after capital investments for maintenance, which allowed the company to invest over Cdn $200 million in development projects over the same period. Despars pf. at 2.

32. Gaz Métro's First Mortgage Bonds are rated A by Standard & Poor's and DBRS Limited. Despars pf. at 2.

33. Since acquiring GMP in 2007, Gaz Métro has invested $46 million in GMP. Separate and apart from the CVPS acquisition, Gaz Métro has committed to invest $75 million in GMP to allow GMP to pursue investments in renewable energy generation, smart grid implementation, and transmission upgrades through the VELCO Companies. Despars pf. at 4.

34. Since Gaz Métro acquired GMP in 2007, GMP has continued to demonstrate the ability to operate the electric system in a safe and reliable manner while charging customers just and reasonable rates. Hopkins pf. at 5.

35. The state's experience to date with NNEEC and Gaz Métro in relation to their ownership of Vermont Gas and GMP supports the conclusion that they will be fair partners. Hopkins pf. at 6.

36. Gaz Métro views its proposed acquisition of CVPS and its total investment in the Combined Company following the merger of GMP and CVPS as a strategic long-term investment. The proposed acquisition of CVPS fits the long-term strategic plan of Gaz Métro, as approved by GMi's board of directors that calls for a prudent and strategic diversification of Gaz Métro into regulated and quasi-regulated businesses. Gaz Métro's expectations are to make a fair return on its investment, diversify its asset base further and provide better service to customers in Vermont. Despars pf. at 5; exh. GMP-1 at 7.

37. Gaz Métro plans to maintain the Combined Company as a Vermont-managed, stand-alone utility. The Combined Company will be directed by its own management and board of directors, and neither Gaz Métro nor NNEEC will manage the Combined Company. Despars pf. at 6-7.

5. Valener, the Caisse and Other Proposed Acquirers of Interests in CVPS

38. Gaz Métro is owned by GMi and Valener with Valener owning the remaining 29 percent limited partnership interest in Gaz Métro that is not owned by GMi. Exh. GMP-1 at 3.

39. Valener is a publicly-traded Canadian corporation that serves as a vehicle for public investors to invest in Gaz Métro. Valener has no employees. Valener's main focus is maintaining its investment in Gaz Métro and supporting its growth. Valener increased its credit line from $75 million to $200 million to ensure that it would have the ability to provide its share

of the investment in Gaz Métro needed for the acquisition of CVPS. Valener will also seek to obtain funding from the capital markets this quarter through the sale of common or preferred stock to ensure sufficient liquidity to support Gaz Métro's future growth and maintain its 29 percent investment in Gaz Métro. Exh. GMP-1 at 3; tr. 3/26/12 at 28-29 (Despars).

40. GMi is wholly owned by Noverco, a Québec corporation. The operations of Noverco are administered by the Caisse pursuant to a management services agreement. Exh. GMP-1 at 2-3 and 8.

41. Trencap, a Québec limited partnership, owns approximately 61.11 percent of Noverco's shares. The general partner of Trencap is CDA, a wholly-owned subsidiary of the Caisse. Exh. GMP-1 at 2.

42. The Caisse owns approximately 59.64 percent of Trencap's limited partnership units. Exh. GMP-1 at 2.

43. The Caisse is the largest institutional fund manager in Canada and serves as the pension fund manager for the provincial government of Québec. As of December 31, 2011, it had net assets under management of approximately Cdn $151.7 billion, and total assets in Québec of Cdn $36.5 billion. Exh. GMP-1 at 8; exh. GMP-2 (Attachment 2.4 at 69 and 138).

44. The Caisse was created in 1965 by legislative act (the "Caisse Act") to manage the funds contributed to the Québec Pension Plan, which at the time was a newly created universal pension plan in Québec. Exh. GMP-1 at 8.

45. The Caisse acts as a global fund manager, and its clients are mostly Québec public and private pension funds and insurance plans. The Caisse is the financial partner of nearly 500 Québec companies and is one of the ten largest real estate asset managers worldwide. Exh. GMP-1 at 8.

46. The Caisse is a "mandatary" of the government of Québec. Under the terms of the Caisse Act, the property of the Caisse is deemed to be property of the government. The Québec government also is vested with certain rights, including rights to the appointment and removal of the members of the board of directors of the Caisse. Pursuant to the Caisse Act, the board of directors appoints the president and chief executive officer of the Caisse with the approval of the provincial government. The Government has no role in the day-to-day operations of the Caisse

and has no authority to give the Caisse any investment or other instructions. The Caisse enjoys full and exclusive powers to manage, control, use, and encumber its property, including its subsidiaries and any entities in which it invests. Exh. GMP-1 at 8.

47. Consistent with its other responsibilities, the Caisse seeks to foster economic growth and development in Québec by providing financing to Québec businesses seeking to expand. Tr. 3/26/12 at 10 (Tall); exh. GMP-1 at 8; exh. GMP-2 (Attachment 2.4 at 69).

48. The Caisse's philosophy is not to actively manage the businesses in which it invests. Tr. 3/26/12 at 17 (Tall).

49. The Caisse acquired its indirect majority equity position in Gaz Métro, which it holds through Trencap, Noverco and GMi, in 2004. The Caisse previously had been an indirect minority shareholder of Gaz Métro between 1991 and 1997. Exh. GMP-1 at 10.

50. Robert Tessier, the former CEO of Gaz Métro, is currently the Chairman of the Board of the Caisse and also serves, at the request of Gaz Métro, as one of the directors of NNEEC, the Vermont subsidiary of Gaz Métro that directly owns GMP and Vermont Gas. Despars pf. at 3; exh. GMP-1 at 7; tr. 3/26/12 at 16-17 (Tall).

51. As an investor and board member, the Caisse is aware of and fully supports Gaz Métro's strategic plan. The profile of Gaz Métro fits within the investment objectives of the Caisse. The Caisse is supportive of Gaz Métro from a long-term perspective as this is consistent with the investment objectives and the long-term liabilities of the pension funds the Caisse manages. The Caisse expects to remain committed to all of Gaz Métro's activities, including its investment in the Combined Company. Exh. GMP-1 at 8; tr. 3/26/12 at 21 (Tall).

52. During the past two years the Caisse has provided and will continue to provide a proportionate share of necessary capital investments in Gaz Métro. Tr. 3/26/12 at 19 (Tall).

53. The Caisse will invest additional equity capital in Gaz Métro to help fund Gaz Métro's acquisition of CVPS. Exh. Board-7 at 2; exh. Board-8 at 2; tr. 3/26/12 at 31-32 (Despars).

54. The Caisse expects to remain an indirect owner of Gaz Métro and to continue to fund its share of the growth of Gaz Métro, barring unforeseen circumstances. Exh. GMP-1 at 11.

55. In addition to the Caisse's sole ownership of Trencap's general partner and its 59.64 percent limited partnership interest in Trencap, Fonds de solidarité des travailleurs du Québec

("Fonds de solidarité FTQ") has a 19.10 percent limited partnership interest in Trencap, and British Columbia Investment Management Corporation ("BCIMC") has a 13.01 percent limited partnership interest in Trencap. Exh. GMP-1 at 2-3.

56. Fonds de solidarité FTQ is a development capital fund, created by the Québec Labor Federation, that invests in small and medium-sized businesses in Québec in an attempt to create and save jobs in the province. Exh. GMP-1 at 3.

57. BCIMC is one of the largest institutional fund managers in Canada and was created by the provincial government of British Columbia as its agent to manage public-sector pension funds and other public-sector trust funds. Exh. GMP-1 at 3.

58. Enbridge, through IPL, owns the remaining 38.89 percent of Noverco's shares. Enbridge, a publicly-traded Canadian corporation, transports and distributes energy products, including crude oil and natural gas, across North America and, among other things, owns and operates the largest gas distribution franchise in Canada with two million customers. Exh. GMP-1 at 3.

59. The Caisse, through Noverco and GMi, has an 8.9 percent equity interest in voting securities of Enbridge. Exh. GMP-1 at 3; exh. GMP-2 (Attachment 1.1).

60. The board of directors of Noverco is currently composed of six directors of whom four are representatives of Trencap and two of IPL (Enbridge). Exh. GMP-1 at 5.

6. VLITE

61. VLITE is a public-benefit, non-profit corporation that was established to acquire and hold an ownership interest in VELCO and is intended to invest dividend income from such ownership interest for purposes consistent with state policy on energy issues. Powell-Reilly pf. at 3 and 24; exh. Pet.-DPS-1 at ¶ 9.

B. General Description of the Proposed Transactions

1. Acquisition of CVPS Common Stock by Gaz Métro and NNEEC

62. CVPS, Gaz Métro and Danaus entered into an Agreement and Plan of Merger on July 11, 2011 (the "Gaz Métro-CVPS Acquisition Agreement") setting out the terms and conditions for the indirect acquisition of CVPS by Gaz Métro. Exh. Pet.-Joint-2.

63. The Gaz Métro-CVPS Acquisition Agreement provides, among other things, that (a) Gaz Métro will acquire CVPS through the merger of Danaus and CVPS with CVPS being the surviving company and becoming an indirect wholly-owned subsidiary of Gaz Métro, and (b) Gaz Métro will provide for the payment to CVPS stockholders of $35.25 for each share of common stock. Powell-Reilly pf. at 7 (Powell), 18 (Reilly); exh. Pet.-Joint-2 at 2-4.

64. As a consequence of the acquisition of CVPS (through the merger of Danaus and CVPS): (a) NNEEC would directly own, and Gaz Métro would indirectly own, all the common stock of CVPS; (b) NNEEC and Gaz Métro would increase their indirect ownership interest in the voting securities of VELCO from approximately 29.5 percent to approximately 40 percent; (c) NNEEC and Gaz Métro would acquire an additional indirect interest of 10 percent or more in VETCO and VYNPC; and (d) NNEEC and Gaz Métro would acquire an additional indirect equity interest in VT Transco of 41.2 percent, which would result in an aggregate indirect equity interest in VT Transco of 72.3 percent. Powell-Reilly pf. at 7, 18 and 20; Dworkin pf. at 9; Amended Joint Petition at 2; *see* findings 5, 6, 7, 16, 17, 18, 20, 25 above, and finding 77 below.

65. Also, as a consequence of the acquisition of CVPS: (a) the Caisse, GMi, Noverco and Trencap would each acquire an indirect majority ownership interest in CVPS as well as indirect ownership interests in VELCO, VETCO, VYNPC and VT Transco; and (b) Valener, Enbridge and IPL, among others, would acquire indirect ownership interests in CVPS, VELCO, VETCO, VYNPC and VT Transco. Powell-Reilly pf. at 7, 18, 20 and 21; exh. GMP-1; *see* findings 20, 25, 27, 38, 40, 41, 42, 49 and 58, above.

66. As of July 31, 2011, 13,422,469 shares of CVPS common stock were outstanding, 254,897 shares were subject to issuance to CVPS executive officers under stock option plans, and 34,604 shares were to be awarded as performance shares to CVPS executive officers. Exh. GMP-2 (Attachment 2.1 at 49 and 84).

67. The costs of the acquisition for Gaz Métro would be at least $515 million and would include: approximately $480 million to purchase the outstanding shares of common stock of CVPS and for payments related to vested stock options and performance shares for CVPS executive officers; approximately $5 million for severance payments due to CVPS executive officers under pre-existing CVPS change-in-control agreements for such officers; $19.5 million paid by Gaz Métro to CVPS (after CVPS's public shareholders approved the terms of the acquisition on September 29, 2011) to reimburse CVPS for termination payments CVPS was required to make to Fortis Inc. ("Fortis"); and about $10 million in transaction fees and expenses. Powell-Reilly pf. reb. at 5 (Powell); exh. Pet.-Cross-13 at 8-9; exh. Pet.-Cross-14 (Proxy Statement at 49-52); exh. Board-13 at 3 and 6.

68. Gaz Métro intends to finance the acquisition of CVPS through a "double-leverage" mix of 50 percent equity and 50 percent debt, which is consistent with Québec regulatory guidelines. Gaz Métro will receive additional equity investments from the Caisse and Valener to meet about half the cost of the acquisition, and the remaining costs will be funded through debt issuances. Tr. 3/26/12 at 31-32 (Despars); exh. Board-6 at 2; exh. Board-7 at 2.

69. GMi has entered into a private placement agreement to sell to certain institutional investors in the United States and Canada U.S. $260 million aggregate principal amount of 3.86 percent senior secured notes due in 2022 and 5.06 percent senior secured notes due in 2042. Funds from this note sale would be loaned by GMi to Gaz Métro on substantially the same terms and would be used by Gaz Métro to partially fund its acquisition of CVPS. Exh. Board-13 at 5.

70. Under the Gaz Métro-CVPS Acquisition Agreement, the board of directors of Danaus will become the board of directors of CVPS immediately following the acquisition of CVPS. The selection of any member of the current CVPS board of directors to the CVPS board following the acquisition will be at the sole discretion of Gaz Métro. Exh. Pet.-Joint-2 at 2.

2. Amendment of CVPS Articles of Association

71. Under the Gaz Métro-CVPS Acquisition Agreement, the existing articles of association of CVPS would be amended in their entirety following the acquisition of CVPS to be identical to

the articles of incorporation of Danaus except for the corporate name, and the bylaws of Danaus will become the bylaws of CVPS. Exh. Pet.-Joint-2 at 2.

72. The effect of the amendment to the articles of association of CVPS would be to simplify the existing articles of association by, among other things, changing the capital stock provisions, including to eliminate all provisions related to preferred stock (all outstanding shares of which will be redeemed by CVPS prior to the acquisition). Powell-Reilly pf. at 16-17 (Reilly); exh. Pet.-Joint-4.1; exh. Pet.-Joint-4.2.

3. Merger of CVPS with and into GMP

73. About three months after the acquisition of CVPS, Petitioners intend that NNEEC will cause CVPS and GMP to merge pursuant to an Agreement and Plan of Merger between GMP and CVPS ("Merger Agreement") under which GMP will be the surviving company. Powell-Reilly pf. at 7 (Powell); exh. Pet.-Joint-3.

74. Under the Merger Agreement, all property, real, personal and mixed, and all debts due to either GMP or CVPS on whatever account, and all and every other interest of or belonging to either GMP or CVPS shall be taken by and deemed to be transferred to and vested in GMP, as the surviving comany in the merger, and all debts, liabilities, obligations and duties of GMP or CVPS shall attach to GMP, as the surviving company, and may be enforced against it to the same extent as if the debts, liabilities, obligations and duties had been incurred or contracted by it. Exh. Pet.-Joint-3 at 2.

75. The Amended and Restated Articles of Incorporation of and the bylaws of GMP will be the Articles of Incorporation and bylaws of the Combined Company. Exh. Pet.-Joint-3 at 2-3.

76. The then-current directors and officers of GMP will continue to be the directors and officers of the Combined Company. Exh. Pet.-Joint-3 at 3.

4. VLITE Acquisition of Controlling Interest in VELCO

77. Prior to the closing of its proposed acquisition by GMP, CVPS will transfer to VLITE no less than 38 percent of the total of VELCO Class B voting common stock and no less than 31.7 percent of the total of VELCO Class C non-voting common stock. Exh. Pet.-DPS-1 at ¶ 7.

Background Circumstances Leading Up to Proposed Transaction

78. On November 15, 2010, CVPS received an unsolicited letter from Gaz Métro in which it expressed an interest in acquiring CVPS at a price of $25.00 per share. On the last trading day prior to receipt of the letter, the closing price of CVPS common stock was $20.13 per share. Exh. Pet-Cross-14 at Proxy Statement at 24.

79. In its letter of November 15, 2010, Gaz Métro conditioned its offer upon it receiving a meaningful share of the synergy savings from a consolidation of GMP and CVPS. Exh. Pet.-Cross-13 at 16; tr. 4/3/12 at 185 (Reilly).

80. On January 7, 2011, CVPS received an unsolicited letter from another bidder ("Company B") in which it indicated an interest in pursuing an acquisition of CVPS at $28.66 per share. Exh. Pet.-Cross-14 at Proxy Statement at 25.

81. In early February 2011, CVPS's board of directors authorized the exploration of strategic alternatives for CVPS and directed its financial advisor to contact potential bidders about acquiring CVPS. CVPS's financial advisor then contacted 16 potentially interested parties, including Gaz Métro, Fortis, Fund A and Company B. Exh. Pet.-Cross-14 at Proxy Statement at 25.

82. On February 22, 2011, Fortis submitted a written indication of interest regarding an acquisition of CVPS at $28.70 per share. Exh. Pet.-Cross-14 at Proxy Statement at 25.

83. In response to a request for specific indications of interest from the 16 contacted potential bidders, Fortis reaffirmed its February 22 indication of interest at $28.70 per share, Company B proposed a price of $28, Gaz Métro proposed a price of $26.50, and Fund A proposed a price of $25.00 per share. Exh. Pet.-Cross-14 at Proxy Statement at 26.

84. On April 18, 2011, Gaz Métro, Fortis and Company B were advised that they should submit firm and final offers by May 16, 2011. Exh. Pet.-Cross-14 at Proxy Statement at 26.

85. On May 16, 2011, each of Gaz Métro, Fortis and Company B submitted an offer letter containing offer prices of $34.00, $30.27 and $30.50, respectively. Exh. Pet.-Cross-14 at Proxy Statement at 27.

86. Although Gaz Métro's offer price meaningfully exceeded the offers of Fortis and Company B, the CVPS board of directors was concerned that Gaz Métro's offer, among other

things, was likely to involve significantly more challenges to receive regulatory approval due to Gaz Métro's proposal to share in customer savings resulting from a merger of CVPS and GMP. Exh. Pet.-Cross-14 at Supplement to Proxy Statement at 3; tr. 4/3/12 at 196-197 (Reilly).

87. On May 24, 2011, Fortis submitted a revised offer of $34.10 per share, while Company B indicated that it was prepared to increase its offer to $32.50, but that amount represented its best and final offer. Exh. Pet.-Cross-14 at Proxy Statement at 28.

88. Late on May 25, 2011, Gaz Métro increased its offer to $35.00 per share. Exh. Pet.-Cross-14 at Proxy Statement at 29.

89. In the morning of May 27, 2011, Fortis increased its offer to $35.10 per share, as part of its proposal which included, among other things, a larger "break-up" fee of $17.5 million and restrictions on the continued payment of dividends to CVPS's shareholders. Exh. Pet.-Cross-14 at Proxy Statement at 29.

90. CVPS and Fortis executed an agreement for the acquisition of CVPS by Fortis for $35.10 per share later on May 27, 2011. Exh. Pet.-Cross-14 at Proxy Statement at 30.

91. On May 30, 2011, CVPS and Fortis each issued press releases announcing the execution of the merger agreement. Exh. Pet.-Cross-14 at Proxy Statement at 30.

92. In the morning of June 23, 2011, CVPS received an unsolicited offer from Gaz Métro to acquire CVPS at $35.25 per share without any restrictions on the continued payment of current dividends. Exh. Pet.-Cross-14 at Proxy Statement at 30.

93. Shortly thereafter, Gaz Métro issued a press release announcing the proposal in which Gaz Métro stated that it would provide customers of CVPS and GMP with $144 million in savings over 10 years. Exh. Pet.-Cross-14 at Proxy Statement at 30.

94. On July 1, 2011, Gaz Métro agreed that, after CVPS's shareholders approved an acquisition agreement with Gaz Métro, it would reimburse CVPS for the break-up fee and expense payments that CVPS would have to pay to Fortis if CVPS accepted its offer. Exh. Pet.-Cross-14 at Proxy Statement at 30.

95. On July 11, 2011, prior to entering into the Gaz Métro-CVPS Acquisition Agreement, CVPS terminated its acquisition agreement with Fortis. In accordance with the terms of that

agreement, CVPS paid Fortis $19.5 million, consisting of a break-up fee of $17.5 million and Fortis expenses of $2 million. Exh. Pet.-Cross-14 at Proxy Statement at 30.

96. Shareholders of CVPS approved the Gaz Métro-CVPS Acquisition Agreement on September 29, 2011. Powell-Reilly pf. reb. at 5.

97. Gaz Métro will pay shareholders of CVPS a premium of about $197 million over the book value of their shares. Exh. Board-8 at 2.

98. The price to be paid to CVPS shareholders by Gas Métro represents a 45 percent premium over the closing CVPS share price ($24.32) on the last trading day prior to the announcement of the Fortis acquisition agreement and a 55 percent premium over the closing CVPS share price ($22.71) on May 4, 2011, the last trading day before publication of a media report speculating about a possible transaction involving CVPS. Exh. Pet.-Cross-14 at Proxy Statement at 35.

99. The Petitioners have received required approvals with respect to the proposed transactions from the Federal Energy Regulatory Commission ("FERC"), Federal Communications Commission, Committee on Foreign Investments in the United States, and the Maine Public Utilities Commission. They also have received waivers from the Federal Trade Commission (under the Hart-Scott-Rodino Act) and the New York Public Service Commission. Powell-Reilly pf. reb. at 5 (Powell); tr. 3/21/12 at 168-173 (Reilly).

C. Additional Plans and Proposals; Effects of Merger and Related Proposals

1. Tariff Integration Process

100. Between the closing of the merger and rate integration, the Combined Company's customers will be separated into two categories: customers in the former GMP service territory who will be served on the then-current GMP tariff rates, and customers in the former CVPS service territory who will be served on tariff rates identical to the then-current CVPS tariff rates. Griffin pf. at 5-6.

101. GMP's customer charge for its general residential tariff is approximately $2.80 lower than CVPS's customer charge for its general residential tariff. CVPS's energy charge for its

general residential tariff is approximately 0.8 percent lower than GMP's energy charge for its general residential tariff. Tr. 3/22/12 at 191 (Griffin).

102. The largest bill impact resulting from blending GMP's and CVPS's general residential rates would occur if a customer used no energy. In that case, blending the two rates is expected to result in a bill impact of between one and two dollars per month. Tr. 3/22/12 at 191-192 (Griffin).

103. Issues related to the integration of tariffs other than the general residential tariffs are more complex. Griffin pf. reb. at 9.

104. Under the DPS MOU, GMP and CVPS general residential tariffs will be integrated on October 1, 2013. Exh. Pet.-DPS-1 at ¶ 30; tr. 3/29/12 at 15 (Foley).

105. Under the DPS MOU, all other GMP and CVPS tariffs will be integrated after the Board approves a new fully allocated rate design for all customer classes. Exh. Pet.-DPS-1 at ¶ 30.

106. The DPS MOU provides that cost-of-service review for the Combined Company will be as provided under the alternative regulation plan ("Alt Reg Plan") of the Combined Company for rates to be effective prior to October 1, 2014. Exh. Pet.-DPS-1 at ¶ 31.

107. The DPS MOU provides that there will be a traditional cost-of-service review[18] proceeding (which will not affect the accounts identified in Attachment III to the DPS MOU ("Base O&M Costs")) for rates effective on or after October 1, 2014. This traditional cost-of-service review will consist of a test year adjusted for known and measurable changes; it will not include adjustments permitted under alternative regulation such as forecasted billing determinants and forecasted rate base. Exh. Pet.-DPS-1 at ¶ 31; tr. 3/29/12 at 16 (Foley).

108. This traditional cost-of-service review will be the basis for the Combined Company's revised rate design filing that, under the DPS MOU, must be filed no later than October 15, 2014. Exh. Pet.-DPS-1 at ¶ 32; tr. 3/29/12 at 17 (Foley).

18. As used herein, the term "traditional cost-of-service review" refers to the review of an investor-owned electric utility's cost of service that was performed in Vermont for decades prior to the introduction of alternative regulation. As a result, there is a significant body of Board precedent regarding what constitutes such a review.

109. The Petitioners agree that IBM, AIV and any other affected customer should have the ability to intervene and participate fully in the rate design proceeding. Griffin pf. reb. at 9; AIV MOU at ¶ 4.

110. The DPS MOU provides that the Combined Company and the DPS will use all reasonable efforts to assure that the rate design proceeding is completed within nine months. Exh. Pet.-DPS-1 at ¶ 32.

111. The Combined Company will have a full year's worth of data from its smart meters before it files its request for a revised rate design. The proposed rate design will be based in part on this data. Tr. 3/22/12 at 194 (Griffin); AIV MOU at ¶ 5.

112. Under the terms of the IBM MOU, the Combined Company will continue to serve IBM on its current C&I Transmission Service Rate and maintain the existence of this rate class, subject to approved rate adjustments and subject to approval by the Board of a new rate design, as contemplated under the DPS MOU. Exh. Pet.-Cross-15 at ¶ 5.

113. The IBM MOU also provides that, as a supplement to the tariff and rate integration provisions of the DPS MOU and as part of the rate design proceeding discussed therein, the Combined Company will account for the differences in costs associated with serving load at the distribution and transmission levels, and will also account for the differences in costs associated with the particular voltage levels at which transmission service is provided. Exh. Pet.-Cross-15 at ¶ 6.

114. GMP does not intend to terminate or otherwise affect the agreement set forth in the Memorandum of Understanding between Omya, CVPS, and the DPS in Docket 7660 that Omya will take service, for Omya's mineral-processing facilities (known as the Verpol Plants) on the CVPS Rate 5 tariff for six years from the date of the closing of the acquisition of the VMPD by CVPS. Griffin pf. reb. at 10; exh. Pet.-DPS-1 at ¶ 35; Allard pf. at 6.

2. Alternative Regulation Plans

115. Currently GMP and CVPS have separate and slightly different Alternative Regulation Plans. The GMP Alt Reg Plan provides for a rate year starting October 1 while the CVPS Alt Reg Plan provides for a rate year starting January 1. Griffin pf. at 6.

116. The DPS MOU provides that GMP, CVPS and the DPS will file a request for Board approval of certain changes to the CVPS Alt Reg Plan and the GMP Alt Reg Plan.[19] Exh. Pet.-DPS-1 at ¶ 23.

117. Under the DPS MOU, GMP, CVPS and the DPS will request the following changes to the GMP Alt Reg Plan: (1) extension of the term for one year until September 30, 2014; (2) inclusion of customers in the CVPS service territory; and (3) inclusion of any changes necessary as of the filing date to conform to the provisions of the DPS MOU or of any other changes appropriate for an alternative regulation plan applicable to the Combined Company that may be agreed upon by GMP and the DPS. Exh. Pet.-DPS-1 at ¶ 23.

118. Under the DPS MOU, GMP, CVPS and the DPS will request the following changes to the CVPS Alt Reg Plan: (1) termination of the CVPS Alt Reg Plan as of September 30, 2012, except for residual adjustments under the Earnings Sharing Adjustment Mechanism ("ESAM") and power adjustor provided for in the existing CVPS Alt Reg Plan; (2) termination of the currently-effective base-rate adjustment as of September 30, 2012; and (3) any adjustments necessary to align the timing and duration of the ESAM adjustments under the CVPS Alt Reg Plan. Exh. Pet.-DPS-1 at ¶ 23.

119. The DPS MOU provides that the power adjustors and ESAM adjustments under the GMP Alt Reg Plan and the CVPS Alt Reg Plan applicable to the period prior to October 1, 2012, will be separately calculated and charged or credited to customers in each legacy service territory. Under the DPS MOU, the power adjustors and ESAM adjustments under the Combined Company Alt Reg Plan for the period beginning October 1, 2012, will be calculated and charged or credited to all customers. Exh. Pet.-DPS-1 at ¶ 24.

120. The DPS MOU provides that, for both GMP and CVPS, GMP will file a base-rate adjustment on August 1, 2012, to be effective on October 1, 2012. Under the terms of the DPS MOU, the percentage change in rates resulting from the base-rate adjustment will be applied to all GMP and CVPS tariffs, except that the percentage change applicable to the GMP C&I Transmission Class will be modified to reflect the provisions of the Combined Company Alt Reg

19. GMP filed this request on April 13, 2012. The Board opened Docket 7864 to consider the specific proposed amendments.

Plan applicable to rate adjustments for that rate class. The DPS MOU provides that the October 1, 2012, base-rate adjustment will be based on a calendar 2011 test year, adjusted to the base-rate year beginning October 1, 2012, based on traditional ratemaking principles as modified by the Combined Company Alt Reg Plan, except that no adjustments due to the merger of CVPS and GMP will be made to Base O&M Costs. Exh. Pet.-DPS-1 at ¶ 25.

121. GMP would not object to providing all parties to Docket 7770 with a copy of GMP's August 1, 2012, base-rate adjustment filing. Tr. 4/3/12 at 121-22 (Griffin); tr. 4/4/12 at 155 (Miller).

122. The DPS MOU provides that any party to Docket 7770 may, as part of the review of the August 1, 2012, base-rate adjustment filing, comment on the Base O&M Costs, and may request a Board investigation under the Combined Company Alt Reg Plan. Exh. Pet.-DPS-1 at ¶ 26.

123. Extension of the term of the GMP Alt Reg Plan by one year to September 30, 2014, will allow sufficient time for GMP to file a cost of service and new proposed Alt Reg Plan in December 2013, while also ensuring earlier full review than might occur if a three-year extension were sought. Foley pf. at 5.

124. Given the magnitude of the consolidation effort that the Combined Company will face if the merger is approved, and given the reality that Alt Reg Plan modifications can be as time consuming or more so than fully litigated rate cases, it would be desirable for a new alternative regulation plan to be undertaken after a year of consolidated operations. This would provide some regulatory relief when completing the consolidation and would provide for a clearer, more informed, and more focused effort during subsequent alternative regulation proceedings. Foley pf. at 6.

125. The IBM MOU provides that when GMP, CVPS and the DPS file a request for Board approval of certain changes to the CVPS Alt Reg Plan and the GMP Alt Reg Plan, they will also file a request for Board re-approval of the GMP Virtual Choice Plan in a manner substantially similar to the Virtual Choice Plan approved by the Board in Docket 7435, which enabled IBM to procure a particular amount of load within regulatory requirements but as a separate option. Exh. Pet.-Cross-15 at ¶ 8; tr. 4/3/12 at 125-126 (Griffin).

3. Service Integration

a. Service Integration Process

126. The integration of CVPS and GMP has three phases. The first phase occurred during the period before the CVPS shareholder vote approving the merger, when integration activities were focused on communications with an array of stakeholders. Otley pf. at 7.

127. The second integration phase began after the CVPS shareholder vote on September 29, 2011, and will end before the closing of the acquisition of CVPS. During this phase, a formal integration program structure has been launched with full and part-time resources from both companies. The integration program includes developing plans to integrate GMP and CVPS across all operational aspects of the companies within the timeframe that will produce the most benefits for customers. Otley pf. at 8; Powell-Reilly pf. reb. at 5 (Powell).

128. During the first part of the second phase, GMP and CVPS divided their businesses into functional areas, and directed the employees with expertise in each functional area to work together to develop a common vocabulary and understanding of what the numbers for each area for each company represent. This work will lead to the development of an operations baseline. Tr. 3/22/12 at 216-217 (Otley).

129. Prior to the acquisition closing, integration teams will establish a baseline of operating cost and performance across the two companies, generate lists of decisions, procedures and policies that must be made and rationalized to create the new, merged company and develop measurement and tracking systems for executing the integration plans. Otley pf. at 8.

130. During the second phase, the integration program has sought to identify operational savings opportunities that result from the combination of the two companies' operations, consistent with the commitments that the Petitioners have made as part of the merger agreement. As of the date of the technical hearings, the integration teams have, working from the bottom up, identified between 60 and 70 percent of the original operational savings target. Otley pf. at 8; tr. 3/22/12 at 219.

131. GMP's goal is to ensure that no customer is further than 45-minutes travel time from a service center, and ideally no more than 30 minutes. The integration teams have used a geo-spatial mapping system to map a 30-minute travel-time ring and a 45-minute travel-time ring

around each existing GMP and CVPS service center to see how they overlap. This analysis shows that some service centers are strong candidates for consolidation because they can be covered by other existing service centers within those parameters. However, as of the date of the technical hearings, GMP and CVPS have not finalized the list of which service centers will be consolidated after the merger occurs. Tr. 3/22/12 at 230, 233-234 (Otley).

132. More substantial service centers with larger numbers of crews can lead to shorter response times even though that service center may be geographically farther away because in any given outage, the larger service centers and crews may be able to more quickly restore a particular customer's service that may be farther down the priority list. Tr. 3/22/12 at 234-235 (Otley).

133. The third integration phase will begin after the CVPS acquisition closes and may last up to seven years. During this phase, all operational activities of the respective companies will be consolidated. Otley pf. at 8.

134. The length of the integration period is due in part to the Petitioners' commitment that no layoffs will occur as a result of the merger of CVPS and GMP and that the right-sizing of the organization will come through natural attrition. It is also due to the fact that GMP and CVPS operate different accounting, operational and customer-service information systems that will need to be run in parallel for a certain period of time to insure that customer invoicing is not affected when the consolidation of these systems occurs. Powell/Reilly pf. at 10.

135. There is not a one-to-one match between GMP's and CVPS's current information technology systems. GMP may have one system that does the work of two-and-one-half CVPS systems and vice versa. As a result, integration of information technology systems is not expected to be complete for at least three to five years. Tr. 3/22/12 at 224 (Otley).

b. Management of Service Integration Process

136. The steering committee for the integration consists of the two companies' CEOs, Chief Operating Officers, CFOs and General Counsels. The steering committee will establish the initial high-level boundaries, objectives, priorities, timelines and budgets for the integration program, and will review issues presented to it by the integration project teams. Otley pf. at 6.

137. A GMP integration lead and a CVPS integration lead will jointly oversee the various integration teams and will facilitate the overall integration planning process. The integration leads will have accountability/authority for the overall day-to-day integration activities across all the project teams, while serving as their respective organizations' leaders of integration work and coordination. Otley pf. at 6-7.

138. The integration leads will be supported by a small project management office led by an integration project manager and will oversee a number of distinct project teams covering the spectrum of utility operational functions that will be assessed, analyzed and implemented during the integration. Otley pf. at 7.

139. Individual project teams will cover areas such as engineering, transmission, distribution, generation, information technology, human resources, and finance and technology, among others. Otley pf. at 7.

140. GMP expects that throughout the integration, it will be reporting service quality metrics to the DPS on a quarterly basis and meeting in person more frequently than normal to keep the DPS staff informed regarding integration activities and operating performance. Otley pf. at 14.

141. During the transition process for key operational systems, there will be an increased possibility of service disruptions and inaccuracies that may be evident to the Combined Company's customers. For example, customers may experience some temporary service issues related to call center requests, billing or other transactions. Otley pf. at 12.

142. The Combined Company will undertake testing and parallel processing prior to significant operational transitions to minimize the possibility of impacts to customers. In addition, the integration process will emphasize communication with customers and stakeholders in advance of key system transition events to increase awareness of the activities and how service might be affected. Otley pf. at 12-13.

c. Integration of Service Quality Plans

143. During the integration, GMP will work to rationalize any differences between the current GMP and CVPS Service Quality Plans and will work with the DPS to make adjustments to create an appropriate program for the Combined Company. Otley pf. at 14.

144. Under the DPS MOU, the baseline included in the Combined Company's Service Quality Plan for customer outage duration will be at least 10 percent better than the baseline that would have resulted from simply blending the baselines in CVPS's and GMP's current Service Quality Plans. Exh. Pet.-DPS-1 at ¶ 21; tr. 4/3/12 at 137 (Griffin).

4. Effects on Employees

145. GMP currently has 206 employees and CVPS currently has 532 employees, for a total of 738 between the two companies. GMP projects that the Combined Company will have 621 employees five years after the merger and 599 employees ten years after the merger. Exh. Pet.-Cross-14 at Attachment 11(a).

146. For CVPS, the average age of the current workforce is 47 and the median age is 48. For GMP, the average age of the current workforce is 47 and the median age is 48. Exh. Pet.-Cross-13 at 5.

147. Labor savings from the merger will not be achieved through layoffs (other than executive officers) or mandatory relocations, but instead through natural retirements and turnover. Powell/Reilly pf. at 13, 15.

148. Over a ten-year period, GMP projects that, as a result of the merger and the consolidation of CVPS's and GMP's service territory, it will be able to eliminate 94 jobs by not replacing many of the employees who are expected to retire during that period and 22 jobs by not replacing some employees lost through natural attrition. Exh. Pet.-Cross-14 at Attachment 11(a).

149. The merger will not reduce the number of customers or miles of distribution and sub-transmission lines. Therefore, positions that are related to either of these factors (such as such as line workers, substation operators, generation operators and customer service representatives) are likely to have a fairly high replacement rate in the event of a retirement in those areas. Otley pf. at 10; tr. 3/22/12 at 237-238 (Otley).

150. Regardless of the merger, the smart grid projects GMP and CVPS are currently implementing will reinvent certain field- and customer-facing functions. This may affect the number of full-time equivalent employees ("FTEs") working in affected areas. Tr. 3/22/12 at 238 (Otley).

151. CVPS estimates that its meter-reading workforce will be reduced from 47 FTEs to 18 FTEs as a result of the smart meter initiative. GMP estimates that its meter-reading workforce will be reduced from 18 FTEs to 6 FTEs as a result of the smart meter initiative. Both companies will also be adding new positions to operate, maintain and maximize the value from the smart metering technology. The number of new positions and the specific roles and responsibilities for those positions have not yet been determined. Exh. Pet.-Cross-13 at 6.

152. While savings from consolidation of operations and resulting job losses could be achieved faster if layoffs were permitted, acquiring savings without layoffs (except for executive officers) eases job loss concern in a manner that is positive for the general good of the state. Hopkins pf. at 6.

153. The merger will result in fewer electric utility jobs in Vermont. Wimette pf. at 4-5; *see*, finding 45, above.

154. The current labor contracts for the two companies will continue in place. Powell/Reilly pf. at 15.

155. Currently, both GMP and CVPS employees travel outside their districts for construction projects and other tasks. The merger will result in more crews in more contiguous territories with enough work to enable them to spend a higher percentage of time within their districts. Thus, after the merger, employees' drive time should diminish. Tr. 3/22/12 at 241 (Otley).

156. Since GMP and CVPS employees already collaborate regularly throughout Vermont where the utilities have adjoining service territories, workforce integration should not cause undue strain on the employees of either company. Hopkins pf. at 6.

157. Based upon the acquiring company's history to date, the Combined Company is likely to provide a good work environment. Hopkins pf. at 6-7.

5. Projected Savings from Enhanced Efficiencies due to Merger and Consolidation of Service Territories of CVPS and GMP

158. The merger of CVPS and GMP provides an opportunity to bring significant benefit to Vermont ratepayers that would not be available in a typical third-party acquisition such as that

presented by the Fortis deal or by the prior Gaz Métro acquisition of GMP. Exh. Board-11 at 5 (Miller).

159. GMP expects that the merger of GMP and CVPS will generate as much as $500 million of savings over a twenty-year period. Bugbee pf. at 2-4.

160. The adjacent nature of the service territories creates an opportunity for cost savings as GMP and CVPS fully integrate their field operations and operate a more efficient territory coverage model. Otley pf. at 4; exh. Pet.-BO-1.

161. CVPS and GMP are compatible, both geographically and demographically. GMP and CVPS both serve a mix of urban, suburban and rural areas within their service territories. Both utilities manage sub-transmission and distribution networks. Both utilities own generation assets within their service territories. CVPS has a more contiguous service territory with more square miles and line miles than GMP. The GMP and CVPS service territories are adjacent throughout Vermont, with the exception of the Montpelier area. The adjacent service territories mean that on most working days, there are operating activities of each company that can occur across the street from each other. Otley pf. at 4.

162. It has been common for the two companies to share resources during major outage events, typically caused by weather. Due to the adjacent service territories and similar operating characteristics of the two companies, the fastest way to restore service to all customers during widespread outages is often to share resources until full restoration is achieved. The two companies' work forces are familiar with each other's territories, safety procedures and operating methods, due to their similarities and history of cross coverage. The legacy of cooperation between GMP and CVPS field and field-support resources should make the integration of the field organizations faster and more complete than if they had no prior experience together. Otley pf. at 4-5.

163. The Combined Company should be able to operate on a more consistent technological platform, which will result in lower costs and more efficiency in systems operations. Absent the merger, GMP and CVPS will continue to deploy redundant technology in their adjacent service territories in support of field operations. After the merger, the Combined Company will be able

to eliminate redundant equipment and deploy a more efficient and robust infrastructure. Otley pf. at 5.

164. The GMP and CVPS functions that will be consolidated in the Combined Company include (but are not limited to):

a. Finance;

b. Legal/Regulatory;

c. Power Planning & Supply;

d. Communications & External Affairs;

e. Human Resources & Training;

f. Field Operations, including transmission, distribution, substation operations, power production, control center, safety, and environmental; and

g. Support Operations, including engineering, information technology, facilities, security, vehicle fleet, metering, customer accounting, customer contact center, customer management, and purchasing.

Otley pf. at 6.

165. GMP estimates O&M savings for the Combined Company resulting from the acquisition of CVPS and the merger of CVPS and GMP over a ten-year period to be about $226.4 million. Bugbee pf. at 3.

166. GMP expects the O&M savings to be permanent and to continue after Year 10. Bugbee pf. at 4.

167. The calculation of projected O&M savings is based on a comparison of the projected O&M costs of the Combined Company with the projected aggregate O&M costs for the two companies if CVPS and GMP remained separate, independent companies. The O&M cost forecast is based on the financial forecasts prepared by each company for the five years 2011-2015. An inflation adjuster was applied for the years 2016-2021. Combined Company O&M costs were calculated by identifying the expected savings associated with the Combined Company's integration activities, and subtracting these expected savings from the aggregate, separate-company cost projections. Bugbee pf. at 2-3.

168. The merged company will be led by a single team of executive officers. Currently, there are twelve GMP and CVPS officers. The plan for the Combined Company will be to have seven

officers at the end of the first year and six officers at the end of the third year and thereafter. The creation of a single executive management team will create cost savings related to compensation and benefits. Otley pf. at 9.

169. The cost savings associated with the creation of a single executive management team are estimated to be approximately $22.7 million over the first ten years. Bugbee pf. at 3.

170. After the acquisition of CVPS by Gaz Métro, the common stock of CVPS will no longer be publicly traded on the New York Stock Exchange. Securities and Exchange Commission ("SEC") fees and the cost of preparing SEC filings will therefore be eliminated. Otley pf. at 9; exh. Pet.-Cross-14 at Proxy Statement at 14.

171. After the merger of CVPS and GMP, a single set of audits will occur annually for the Combined Company, eliminating the need for payment of separate GMP and CVPS audit fees. Otley pf. at 9.

172. A single board of directors will oversee the activities of the Combined Company, resulting in cost reductions associated with board fees and expenses. Otley pf. at 9.

173. As a Combined Company, there will be a single set of interactions with Vermont regulators regarding rates, infrastructure expansion and other regulated activities. Otley pf. at 9.

174. GMP estimates that savings in SEC fees and costs, duplicate audit and board of director costs, and regulatory costs will be approximately $25.7 million over the first ten years. Bugbee pf. at 3.

175. As a result of the merger of CVPS and GMP, the streamlining of operations and the improved use of technology, GMP believes the Combined Company will be able to sustain the current level of operations and service with fewer employees. Otley pf. at 9-10; *see*, findings 145-151, above.

176. The Petitioners anticipate that the merger of CVPS and GMP will allow the Combined Company to reduce its work force by 116 employees over the next ten years. Exh. Pet.-Cross-14 (Attachment 11(a)); exh.Pet.-Cross-13 at 5.

177. The CVPS average compensation currently is $71,428 (excluding officers). The GMP average compensation currently is $77,383 (excluding officers). Exh. Pet.-Cross-13 at 5.

178. GMP forecasts that approximately 40 percent of the collective GMP and CVPS workforce will be eligible for retirement in the next five years. For purposes of its savings projections, GMP used conservative assumptions about employee age and years of service to forecast retirements over the next ten years at GMP and CVPS. Otley pf. at 9-10.

179. Even though GMP does not foresee significant change in the number of front-line employees in the Combined Company, it expects to achieve cost reductions by consolidating service territories and service districts within the service territory and reducing the number of managerial and supervisory employees that oversee the front-line work. Otley pf. at 10; *see*, finding 149, above.

180. The projected merger savings will not include savings from the elimination of certain CVPS information technology staff positions as was recommended in a 2008 report by Huron Associates ("Huron") in connection with the Docket 7496 investigation into CVPS costs. Otley pf. reb. at 3-4.

181. Savings due to the elimination of job positions through the non-replacement of employees who retire or otherwise voluntarily leave the Combined Company are estimated to be approximately $88.2 million over the first ten years following the merger. Bugbee pf. at 3; exh. Pet.-Cross-13 at 4-6.

182. GMP will review all redundancies that exist between GMP and CVPS operations. Where redundancies exist in operations and these can be eliminated without affecting service quality, they will be eliminated. The Combined Company will focus on operational cost savings, such as those that will result from combining service centers. Otley pf. at 10-11.

183. Projected savings estimates for operations include and are based on: the consolidation of three service centers; improved contract terms with vendors (including for line support during storms); reduced overtime and need for resources during storms through the integration of line crews; reduction of GMP's reliance on outside specialty services that CVPS is able to offer in-house; consolidation of inventories and on-demand inventory requirements; reduction in vehicle fleets due to contiguous service territories; and the reduction of overhead costs. Exh. Pet.-DDB-2.

184. Operations savings are estimated to be approximately $54.3 million over the first ten years after the merger. Bugbee pf. at 3.

185. GMP will consolidate GMP's and CVPS's information technology infrastructures into a single enterprise platform, which will create savings due to the elimination of certain maintenance contracts and costs, lower hardware costs, lower data center costs, and better pricing for licenses. Otley pf. at 11; Powell-Reilly pf. at 11 (Powell).

186. Savings associated with the consolidation of the two companies' information technology systems are estimated to be approximately $17 million over the first ten years. Bugbee pf. at 3.

187. GMP will also seek to bring in-house some work that is typically performed by outside entities (such as contract work in the areas of finance, legal services, engineering, information technology, and metering). Otley pf. at 11-12.

188. Savings related to a reduced use of outside services (including legal fees and fees for other consultants) are estimated to be approximately $18.5 million over the first ten years. Bugbee pf. at 3.

189. GMP projects that the total O&M cost savings related to the acquisition and merger in each of the first ten years after the merger will be approximately as follows: Year 1 – $6.5 million; Year 2 – $13.7 million; Year 3 – $17.3 million; Year 4 – $21.1 million; Year 5 – $24.0 million; Year 6 – $26.0 million; Year 7 – $28.0 million; Year 8 – $29.0 million; Year 9 – $30.0 million; Year 10 – $31.0 million. Bugbee pf. at 2; exh. Pet.-DDB-2.

6. Proposals to Guarantee Customer Savings and to Share Savings with Combined Company

a. Savings Guarantees to Customers

190. Under the DPS MOU, GMP guarantees savings in rates of at least $144 million beginning October 1, 2012, and ending ten years thereafter. Exh. Pet.-DPS-1 at ¶ 17.

191. If the total savings reflected in retail rates during the ten-year period after the closing of the merger (as determined in accordance with the DPS MOU) are less than $144 million, GMP commits to provide the difference to customers through a bill credit under a plan that will include a proposed methodology and schedule for implementation, will be filed with the Board no later

than December 31, 2022, and will be subject to the Board's approval. Exh. Pet.-DPS-1 at ¶ 17; exh. Pet.-Cross-15 at ¶ 4.

192. As part of its overall commitment to guarantee total merger savings to ratepayers in the nominal amount of at least $144 million, GMP committed in the DPS MOU to provide fixed annual guaranteed savings in years 1 to 3 to all retail customers, in the following aggregate amounts: Year 1 (beginning October 1, 2012) – $2,500,000; Year 2 – $5,000,000; Year 3 – $8,000,000. Exh. Pet.-DPS-1 at ¶ 15.

193. The annual guaranteed savings amounts will be reflected in base rates as a credit to the Combined Company's base-rate cost of service. Exh. Pet.-DPS-1 at ¶ 27.

b. Sharing of Savings from Merger with GMP

194. Under the DPS MOU, the Petitioners and the Department propose that, for the first eight years after the merger, O&M cost savings resulting from the merger will be shared by customers and the Combined Company, rather than having all such cost savings be reflected in rates based on actual O&M costs. Exh. Pet.-DPS-1 at ¶¶ 25, 27-28; exh. Board-12.

195. For each of the first three years after the merger, the Combined Company, after crediting its base-rate cost of service with the amount of annual guaranteed savings due to its customers for such year, will benefit from any O&M cost savings resulting from the merger for such year. Exh. Pet.-DPS-1 at ¶¶ 25 and 27; exh. Board-12.

196. Under the DPS MOU, any net merger-related cost savings that occur between the closing of the acquisition of CVPS and October 1, 2012, are included as part of the Year 1 guaranteed savings. Exh. Pet.-DPS-1 at ¶ 29.

197. In years 4 to 8 after the merger, the DPS MOU provides for the Combined Company and customers each to receive the benefit of 50 percent of the O&M cost savings resulting from the merger. Exh. Pet.-DPS-1 at ¶ 27.

198. Beginning in the ninth year after the merger and continuing thereafter, all O&M cost savings related to the merger will flow to customers and O&M costs included in base-rate adjustments will be based on actual costs, traditional ratemaking principles and the terms of any alternative regulation plan then in effect. Exh. Pet.-DPS-1 at ¶¶ 15 and 28.

199. Under the Petitioners' original proposal, customers would have realized a smaller share of the projected savings in the first six years after the merger and all the savings thereafter. The shift in the timing of ratepayer benefits in the DPS MOU so that greater amounts of benefits are provided in the first six years after the merger is a major improvement over the Petitioners' original proposal. Powell-Reilly pf. at 10-11 (Powell); Wilson pf. at 6; tr. 3/27/12 at 72 (Wilson).

200. Assuming $226.4 million of O&M cost savings are realized in accordance with the projected schedule and applying a discount rate of 8 percent, the Combined Company's customers would receive about 58 percent, and the Combined Company would receive about 42 percent, of these savings on a net present value basis during the ten-year period after the merger. Exh. Board-12.

201. Any non-O&M cost savings associated with the merger of CVPS and GMP will not be shared with the Combined Company and will be reflected in cost of service and rates. Exh. Pet.-Cross-13 at 4.

c. Implementation of Shared Savings Proposal and Calculation of Savings

202. The Petitioners and the Department propose to implement the shared savings proposals through a base-rate adjustment to the Combined Company Alt Reg Plan. Under the DPS MOU, GMP will file a base-rate adjustment for both GMP and CVPS on August 1, 2012, with an effective date of October 1, 2012. The October 1, 2012, base-rate adjustment would be based on a calendar 2011 test year, adjusted to the base-rate year beginning October 1, 2012, based on traditional ratemaking principles as modified by the Combined Company Alt Reg Plan, except that no adjustments due to the merger of CVPS and GMP would be made to the Base O&M Costs. Exh. Pet.-DPS-1 at ¶ 25.

203. Base O&M Costs will exclude all savings and costs related to Smart Grid and Advanced Meter Infrastructure, the Kingdom Community Wind Project, CVPS's acquisition of VMPD assets from Omya, CVPS staff reductions associated with the Docket 7496 MOU, which will all be reflected in rates consistent with traditional ratemaking principles. Exh. Pet.-DPS-1 at ¶ 25.

204. The intention of the parties to the DPS MOU is to create an adjusted base year that reflects a representative test year without exogenous, non-recurring or unusual events or expenses in it, such that, for example, in the case of the 2011 test year, the costs associated with Tropical Storm Irene would not be included in base-year accounts used to determine merger savings. Exh. Pet.-DPS-1 at 12 (footnote 3).

205. The Petitioners and the Department intend that the percentage change in rates resulting from the base-rate adjustment filed by GMP on August 1, 2012, will be applied to all GMP and CVPS tariffs, except that the percentage change applicable to the GMP C&I Transmission Class will be modified to reflect the provisions of the GMP Alt Reg Plan applicable to rate adjustments for that rate class. Exh. Pet.-DPS-1 at ¶ 25.

206. Under the DPS MOU, Base O&M Costs would be subject to change in each future base-rate adjustment in which merger savings are shared to reflect the change in the Consumer Price Index for All Urban Consumers (CPI-U) Northeast Region, any Exogenous Costs and the impact of the Non-Power Cost Cap as defined in the GMP Alt Reg Plan, and any further changes agreed upon by GMP and the Department and approved by the Board. Exh. Pet.-DPS-1 at ¶ 25.

207. As part of the base-rate adjustment, effective October 1, 2012, any party to this proceeding will be able to comment on Base O&M Costs and request a Board investigation under the GMP Plan. Exh. Pet.-DPS-1 at ¶ 26.

208. In addition to the credit to GMP's base-rate cost of service for the annual guaranteed savings in the first three years after the merger, GMP's base-rate cost of savings in Years 4 to 8 after the merger will be credited in the following amounts (which are equal to approximately one-half of the O&M savings estimates projected by GMP in each of those years): Year 4 – $10.5 million; Year 5 – $12.0 million; Year 6 – $13.0 million; Year 7 – $14.0 million; Year 8 – $14.5 million. Exh. Pet.-DPS-1 at ¶ 27; exh. Pet.-DDB-1 at 2; exh. Pet.-DDB-2.

209. Annual savings for purposes of the shared savings proposal would be equal to the difference for any year between (i) Base O&M Costs, as adjusted, and (ii) actual O&M costs, which would be determined with reference to the same accounts used to determine Base O&M Costs after similarly excluding all savings and costs related to Smart Grid and Advanced Meter Infrastructure, the Kingdom Community Wind Project, CVPS's acquisition of VMPD assets, and

staffing reductions associated with the Docket 7496 MOU ("Actual O&M Costs"). Exh. Pet.-DPS-1 at ¶ 27; Griffin pf. reb. at 1-2

210. To the extent there is a difference between (i) 50 percent of the annual savings in Years 4 to 8 and (ii) the amounts credited to GMP's base-rate cost of service in Years 4 to 8 based on the savings estimates, an appropriate billing adjustment will be made when the next ESAM is implemented. Exh. Pet.-DPS-1 at ¶ 27.

211. No later than July 1, 2012, GMP will file with the Board and provide to the parties in this docket a format for reporting merger-related savings and a procedure for review and verification. Exh. Pet.-DPS-1 at ¶ 16.

212. Under the DPS MOU, GMP will file an annual report of merger-related savings for at least ten years after the merger. Exh. Pet.-DPS-1 at ¶ 26.

d. Additional Considerations Related to Proposals for Shared Savings

213. Recovery of acquisition premiums in rates is not the norm in public utility acquisitions and mergers. Investors in regulated utilities are not generally compensated for buying utility enterprises or for the prices at which they may have bought public utility common stock. Wilson pf. at 21.

214. Although the Combined Company does not seek to include its acquisition premium or costs in rate base, it does intend to recover an approximately equivalent amount from ratepayers using alternative mechanisms. The recovery of such costs through the shared savings mechanism and through the difference in the Combined Company's allowed return on equity and the costs of the debt with which Gaz Métro plans to finance half its equity investment in CVPS should be carefully considered when reviewing the Proposed Transaction. Wilson pf. at 8, 14-20 and 25; tr. 3/27/12 at 58, 65-66, 68-69 and 71-73 (Wilson).

215. In addition to the benefits it will derive from shared savings, Gaz Métro, by financing half of its acquisition costs through debt, will also benefit from the difference between the cost of its equity investment in CVPS and the return on equity that will be earned by the Combined Company on its adjusted rate base. Assuming a 4.5 percent debt cost, the extra annual profit flowing from this double-leverage financing will be at least $16,018,786. Over a ten-year period

this would amount to a present value gain (with an 8 percent discount rate) of $111.7 million ($126.7 million with a 5 percent discount rate). Wilson pf. at 14-15 and 17-19; tr. 3/27/12 at 66-67; Wilson pf. sur. at 8-9; exh. Board-13 at 5.

216. The Combined Company and its shareholder would receive at least $82.4 million of benefits during the eight years after the merger if projected merger savings are achieved as forecast and more if merger savings are greater than projected. The Department calculates the net present value of the Combined Company's share of the savings during the first eight years after the merger if savings projections are met at about $61.3 million (applying an 8 percent discount rate). Wilson pf. at 9; exh. Board-12; exh. Board-13 (Attachment 1); exh. Pet.-DDB-2.

217. CVPS viewed the terms and circumstances of the Fortis acquisition as being similar to and consistent with Gaz Métro's acquisition of GMP in 2007. In the negotiations between CVPS and Fortis, there was no discussion of Fortis directly or indirectly recovering in rates any portion of the acquisition premium it had agreed to pay (through shared savings or otherwise), and there was no such requirement in the CVPS agreement with Fortis. Exh. Pet.-Cross-13 at 16; tr. 4/3/12 at 196-197 (Reilly).

218. Among the reasons provided by CVPS for why its board of directors did not accept Gaz Métro's offer of May 16, 2011 (even though it was meaningfully higher than any other offer) was a concern about regulatory challenges to approval due to Gaz Métro's shared savings proposal. To CVPS's knowledge, there was no precedent in Vermont for the proposed sharing merger or acquisition savings. Exh. Pet.-Cross-14 (Supplement to Proxy Statement at 3); tr. 4/3/12 at 196 (Reilly).

219. CVPS did a preliminary analysis of the savings available to customers from the Fortis transaction. Those savings were estimated to be in the range of $2.5 to $3.0 million per year and $25 to $30 million over ten years. Exh. Pet.-Cross-13 at 14 and 16; tr. 3/21/12 at 167 (Reilly).

220. There would likely be sufficient savings from the Fortis acquisition of CVPS to demonstrate net benefits for customers from the acquisition, but not on the order of magnitude of savings that is available through the proposed transactions with Gaz Métro. Tr. 4/3/12 at 197 (Reilly).

221. Because Gaz Métro's acquisition of CVPS will result in the merger of two companies with contiguous service territories, it presents greater opportunities for consolidation and cost savings than the Fortis acquisition. Exh. Pet.-Cross-13 at 15.

222. GMP, NNEEC and Gaz Métro will not recover any portion of the acquisition premium paid to acquire CVPS under the shared savings proposal unless savings are achieved. Tr. 4/4/12 at 117 (Miller).

223. The guaranteed rate benefits in the first three years after the merger and the overall increase in customer-savings benefits in the first six years after the merger as provided in the DPS MOU represent a major improvement in the shared savings proposal and reduce the risks to ratepayers. Tr. 3/27/12 at 71-72 (Wilson); tr. 4/4/12 at 142-144 (Miller).

224. By committing to no layoffs other than at the executive level, the Petitioners have forfeited the ability to realize significant and relatively certain near-term cost savings relied on in other utility mergers. Hevert pf. reb. at 13-14.

225. Petitioners' method for determining savings by comparing pre-merger costs and post-merger costs is consistent with past utility merger cases in other jurisdictions. Hevert pf. reb. at 21.

226. Historically, O&M costs have risen above the level of inflation for CVPS and GMP on an aggregated basis. Petitioners would expect this historical trend to continue absent the Proposed Transaction. Under the DPS MOU, Base O&M Costs used in the calculation of O&M merger savings would be subject to change in each future base rate adjustment based on the Consumer Price Index for All Urban Consumers (CPI-U) Northeast Region. Griffin pf. reb. at 3; tr. 3/22/12 at 167-68 (Griffin); exh. Pet.-DPS-1 at ¶ 25..

227. GMP will continue to apply the non-power-cost cap (based on inflation less productivity) to base-rate adjustments that have applied previously under each company's alternative regulation plan. As a result, the post-merger base-rate adjustments, including the Base O&M Cost component reflecting pre-merger costs, will continue to be subject to the cap. To the extent that the total non-power-supply costs exceed the cap, the revenue requirement for the base-rate adjustment will be reduced accordingly. Griffin pf. reb. at 3; tr. 3/22/12 at 171-72 (Griffin).

7. Effect on Retail Rates

228. The cost reductions resulting from the acquisition and merger will produce rates that are lower than they would otherwise be, although there is no assurance that the Combined Company's rates will be lower than the existing rates of CVPS and GMP. Wilson pf. at 7.

229. Assuming there are $144 million of O&M cost savings in rates over the next ten years (and no change in cost of service unrelated to the merger nor other savings related to the merger), GMP projects that the Combined Company's rates across all customer classes will be about 5.82 percent lower in year 10 as compared to the current rates of GMP and CVPS. Exh. Pet.-Cross-13 at 7; tr. 4/3/12 at 106-107 (Griffin).

230. Assuming $144 million of O&M savings are reflected in rates over the next ten years as provided in the DPS MOU and on the schedule projected by GMP, the net present value of the cumulative savings over ten years (as compared with 2010 FERC Form 1 rate data for CVPS and GMP) will be about $184 for a GMP residential customer and about $177 for a CVPS residential customer using 7,200 kwh per year or 600 kwh per month. Exh. Board-13 at 2; exh. Pet.-Cross-13 at 7-8.

231. If the total savings reflected in rates during the ten-year period after the closing of the merger (as determined in accordance with the DPS MOU) are less than $144 million, GMP will provide the difference to customers through a bill credit under a plan to be filed with the Board no later than December 31, 2022. Exh. Pet.-DPS-1 at ¶ 17; exh. Pet.-Cross-15 at ¶ 4.

8. Other Effects on GMP, CVPS and the Combined Company

232. Rating agencies identify concentration risk and the associated challenges in managing economic downturns affecting customers as one of the main concerns related to electric utilities. A large portion of GMP's retail load is comprised of one company – IBM. The merger will reduce the level of customer concentration for the Combined Company. Bugbee pf. at 5.

233. The maintenance of a strong liquidity position and access to capital are important considerations for utilities. CVPS and its customers will benefit, as GMP has since 2007, from having a financially strong equity owner and a source of liquidity for financing the equity portion

of investments and in maintaining the Combined Company's financial position and financial ratios. Bugbee pf. at 5-6; Despars pf. at 6.

234. In the wholesale power markets, companies with better credit are able to negotiate more favorable terms relating to collateral or other credit support provided as security for non-performance. The indirect ownership of the Combined Company by Gaz Métro may provide some related cost benefits to CVPS's customers in the negotiation of power supply contracts. Despars pf. at 6.

235. The Combined Company should be able to negotiate better contract terms from vendors and in the power supply markets due to greater buying power and a stronger credit position. Bugbee pf. at 6.

236. The Combined Company will also be better able to secure mutual aid during storms, because the two companies will no longer be competing for the same limited resources. Bugbee pf. at 6.

237. The proposed changes in management structure, under which a number of officers of CVPS will not be retained by the Combined Company, are not expected to lead to any negative impacts on the operations of the Combined Company. Hopkins pf. at 5.

238. The Combined Company will be technically competent to continue providing high quality service to its customers. Otley pf. at 15.

9. Effects on City of Rutland

239. CVPS has been based in Rutland for 75 years and the Rutland region is home to the majority of CVPS's employees. Louras pf. at 2.

240. Many of the Rutland area's community organizations rely on participation by CVPS employees. Louras pf. at 3.

241. The loss of CVPS employees would likely have a detrimental effect on the City of Rutland's tax base through reduction of property values and the shrinking of disposable income within the community. Louras pf. at 3.

242. If the Combined Company abandoned the buildings CVPS currently occupies in Rutland, those buildings would likely be added to the already large list of vacant commercial property in the area. Louras pf. at 3.

243. The Rutland region has continuously lagged behind other parts of Vermont in terms of economic development and job creation. As of August 2011, Rutland County's unemployment rate was 6.5 percent, which is materially higher than that of Chittenden County, which was 4.6 percent at that time. Louras pf. at 3.

244. Under the terms of the Rutland MOU, the Combined Company expects and intends to maintain proportional levels of its employee base headquartered in the Rutland area. The base figure will be determined by calculating the percentage of Rutland-area jobs in the Combined Company on the effective date of the merger. The Combined Company will report to Rutland on the employment levels five, eight, and ten years from the effective date of the merger. Exh. Rutland-Cross-1 at ¶ 1(c); tr. 3/22/12 at 243 (Otley).

245. The Rutland MOU provides that both the Combined Company's Headquarters for Operations and its Energy Innovation Center will be located in Rutland City or Rutland Town. The Headquarters for Operations will direct activities consistent with, but not limited to, operations currently conducted out of CVPS's Post Road facility. The Energy Innovation Center will serve as a catalyst for innovative programs related to renewable energy, efficiency, customer service options, smart grid technology, and new product offerings. Exh. Rutland-Cross-1 at ¶¶ 1(d) and (e).

246. Rutland is an appropriate place for the Combined Company's Headquarters for Operations because of its geographic location in the state, and the core competence and skill sets of the current CVPS employees who live there. Tr. 3/22/12 at 242-243 (Otley).

247. Under the terms of the Rutland MOU, following a collaborative, stakeholder-based engagement process with Rutland community leadership, the Combined Company will identify a suitable and appropriate site in downtown Rutland for construction or redevelopment of a new Combined Company facility. The engagement process will begin no later than the effective date of the merger. The Combined Company will work with local leaders on a plan to repurpose existing CVPS facilities. Exh. Rutland-Cross-1 at ¶ 1(f).

248. The Rutland MOU provides that the Combined Company will establish a solar city program in Rutland County with the goal of having the Rutland area become the leading solar generation center in Vermont. Exh. Rutland-Cross-1 at ¶ 1(g).

249. Under the terms of the Rutland MOU, the Combined Company will create and fund a $100,000 "Open for Business" fund to be administered by the Downtown Rutland Partnership, and a $100,000 "Green Growth" fund to be administered by the Rutland Economic Development Corporation. Exh. Rutland-Cross-1 at ¶ 1(h).

250. The Rutland MOU provides that the Combined Company will continue CVPS's historic level of leadership and participation in the community. Exh. Rutland-Cross-1 at ¶ 1(I).

251. Approval of the Rutland MOU will not require the DPS to take or refrain from taking any position regarding rate recovery for investments or expenditure made pursuant to that MOU. Exh. Pet.-DPS-1 at ¶ 34.

10. Effects of Proposed Transactions on VELCO

252. VELCO is a public service company that manages the Vermont electric transmission system. VELCO is the manager of VT Transco, a separate entity which owns the transmission assets operated by VELCO. Dutton pf. at 4-5.

253. VELCO's role as the operator of Vermont's transmission system changed materially in the mid-1990s when FERC established the Regional Transmission Operator system ("RTO") to create independent entities to operate the nation's electricity grids in regional components. To this end, the establishment of the RTO structure required VELCO to surrender ultimate operational control over its network to the Independent System Operator for New England ("ISO-NE"). Furthermore, VELCO's open access tariff is a schedule component of the ISO-NE transmission tariff. ISO-NE has the lead role for transmission planning in New England, and all of VELCO's construction projects to promote the reliability of its transmission system must undergo a review process at ISO-NE. Dutton pf. at 14-15.

254. VELCO is governed by duly enacted bylaws (the "VELCO Bylaws") and a shareholder-elected board of directors (the "VELCO Board"). Dutton pf. at 6.

255. The current VELCO Bylaws authorize the election of a board with between seven to twenty-one directors. Customarily, the membership of VELCO's Board has consisted of thirteen directors who are elected annually by the company's shareholders. Dutton pf. at 6.

256. In the past, by informal agreement, four of the VELCO directors have been nominated by CVPS, two by GMP and one each by BED, VEC, and VPPSA. In addition, VELCO's CEO has held one director seat and there have been three independent directors who have had no affiliation with Vermont's retail electric utilities. Dutton pf. at 6.

257. VELCO also has an "Operating Committee" that was formed in 2008 to function similar to an owner's committee with a wider mandate to account for the broader role of VELCO's owners as customers who pay the rates for VELCO's transmission service. The Operating Committee is empowered to review and advise VELCO on tariff administration issues (for example, the applicability and interpretation of the 1991 Vermont Transmission Agreement), business practices, operations management and strategic issues, among other things. Dutton pf. at 17.

258. Since its formation, the Operating Committee has served as a problem-solving forum for issues facing one or more of the distribution utilities and VELCO. At present, the Operating Committee includes members from SED, BED, VPPSA, VEC, GMP, CVPS and VELCO. The Operating Committee's meetings are open to anyone who wishes to attend them, including distribution utilities such as WEC, who is not a member of the committee. Dutton pf. at 17-18; tr. 3/28/12 at 24-25 (Dutton); exh. VELCO-CLD-5.

259. VT Transco is a Vermont limited liability company whose members are Vermont's distribution utilities and VELCO. VT Transco's principal business purpose is to plan, finance, construct, operate, maintain and expand Vermont's transmission facilities to provide for an adequate and reliable transmission system that meets the needs of all users who are dependent on Vermont's transmission system and that supports effective competition in energy markets without favoring any market participant. Dutton pf. at 7; exh. VELCO-CLD-8 at 8.

260. VT Transco is managed by VELCO and governed by two key agreements: the Operating Agreement (among its members) and the Management Services Agreement (between VT Transco and its manager VELCO). Dutton pf. at 7.

261. As the manager of VT Transco, VELCO has the "full, complete and exclusive discretion to manage and control the business" of VT Transco for the purposes stated in the operating agreement executed between VELCO and the owner-members of VT Transco. VELCO is empowered, subject to regulatory approvals, to appoint, employ, contract or transact the business of VT Transco. VELCO is specifically authorized to execute agreements with VT Transco's owner-members, including agreements regarding the contribution of assets to VT Transco (in exchange for membership units) and the provisioning of transmission services. Exh. VELCO-CLD-8 at 9 and 18.

262. As a manager-managed limited liability company (as opposed to member-managed), VT Transco does not have a board of directors. In effect, it is VELCO's Board that makes major decisions for VT Transco regarding matters such as financing, company restructuring and major capital investments. Dutton pf. at 7.

263. The members of VT Transco are offered equity on a "transmission-cost-ratio" basis — a ratio that is calculated by dividing the transmission costs paid by a distribution utility by the total transmission costs charged to all Vermont distribution utilities. Dutton pf. at 5.

264. GMP currently owns approximately 29.5 percent of VELCO, while CVPS owns approximately 48.5 percent of VELCO. On a combined basis, these two companies own approximately 78 percent of VELCO. Powell-Reilly pf. at 20-21.

265. On a combined basis, GMP and CVPS own approximately 72 percent of VT Transco ownership units. Powell-Reilly pf. at 21.

266. Without the terms in the DPS MOU pertaining to the transfer of VELCO shares to VLITE, VELCO's governance in the future and VELCO's role in managing VT Transco, the effect of approving the Proposed Transaction would be to transform GMP into the majority and controlling shareholder of VELCO and VT Transco. Powell-Reilly pf. at 20-21; exh. Pet.-DPS-1 at ¶¶ 7, 13 and 14.

267. The VELCO transmission system is subject to FERC's open access requirements, thereby ensuring that there is fair and open competition regardless of the ownership and control of Vermont's transmission facilities. Powell-Reilly pf. at 17-18 (Reilly).

11. VELCO Governance Proposals and Their Effects

268. To address concerns regarding majority control of the governance of VELCO, the DPS MOU provides that, prior to the closing of its proposed acquisition by GMP, CVPS will transfer to VLITE no less than 38 percent of the total of VELCO Class B voting common stock and no less than 31.7 percent of the total of VELCO Class C non-voting common stock. Exh. Pet.-DPS-1 at ¶ 7.

269. The DPS MOU further provides that Petitioners will perform all actions necessary to effectuate the election of the initial members of the VLITE board of directors as directed by the Department before the closing of any acquisition approved in this Docket. The Department will select initial VLITE directors from representatives of state government agencies, energy policy interest groups, consumer and low-income advocates, and public power utilities. Exh. Pet.-DPS-1 at ¶ 8.

270. The DPS MOU further provides that VLITE will participate as a shareholder in VELCO for all purposes and will be entitled to designate members of the VELCO Board pursuant to a VELCO Voting Agreement, in accordance with technical, governance, public interest, and other criteria designed to select representatives well-qualified to exercise fiduciary duties as VELCO Board Members to further VELCO's mission. The VLITE board of directors may also establish criteria for voting of its VELCO shares. The VLITE board of directors will have the authority to invest its VELCO dividends in any manner consistent with State policy on energy issues, as set forth in the Comprehensive Energy Plan or as otherwise subsequently designated. Exh. Pet.-DPS-1 at ¶ 9; tr. 4/4/12 at 136-137 (Miller).

271. The DPS MOU obligates Petitioners to make best efforts to obtain a waiver from the other owners of VELCO of any Right of First Refusal provisions regarding the transfer of VELCO stock contained in any VELCO governance documents. Exh. Pet.-DPS-1 at ¶ 10.

272. The DPS MOU provides that immediately after the closing of the CVPS acquisition, GMP, CVPS, and VLITE will enter into a voting agreement requiring each of them to vote all of their VELCO shares in the following manner:

a. To continue the number of VELCO directors at thirteen;

b. To vote for the following VELCO directors: four directors as designated by GMP, and three directors as designated by VLITE;

> c. To support the nomination, subject to independence criteria, of two independent directors by those owners of VELCO that are municipal electric distribution utilities or member cooperative electric distribution utilities, including those electric distribution utilities that do not otherwise maintain seats on the VELCO Board. Such director nominees will be approved by a majority vote of the shareholders of VELCO; and
>
> d. To continue the other director designations presently in existence as follows: one director designated by VPPSA, one director designated by VEC, one director designated by BED, and a director seat for the president/CEO of VELCO, provided that the president/CEO not be permitted to serve as chairman of the board of directors, cannot serve as a voting member of the executive committee (however denominated), the audit committee (however denominated), or the executive management compensation committee (however denominated).

Exh. Pet.-DPS-1 at ¶ 11.

273. The DPS MOU provides that GMP will agree to support amendments to bylaws and any other governing documents to formalize the process for the nomination and election of VELCO Directors, including criteria and standards for the nomination of independent directors, and to provide that VELCO will be managed as a public utility consistent with the public good of the State of Vermont. Additionally, the DPS MOU requires GMP to advocate for all VELCO shareholders to enter into a Voting Agreement substantially similar to the Voting Agreement appended to the DPS MOU. Finally, the DPS MOU memorializes GMP's agreement to advocate for VELCO to allow all Vermont distribution utilities with ownership interests in VT Transco to participate fully as members of the VELCO Operating Committee. Exh. Pet.-DPS-1 ¶ 12.

274. The DPS MOU provides that, immediately after the closing of the acquisition of CVPS, Petitioners will take all actions necessary to assure that none of them individually or collectively can unilaterally remove VELCO as the managing member of VT Transco or eliminate or amend Section 9.3 of the VT Transco Operating Agreement, including, without limitation, amendment of the VT Transco Operating Agreement in a form acceptable to the Department. Exh. Pet.-DPS-1 at ¶ 13; tr. 4/4/12 at 137-38 (Miller); *see* exh. VELCO-CLD-8.

275. The DPS MOU memorializes Petitioners' affirmation that they do not intend or desire to obtain a majority position in VELCO governance now or in the future. Pet.-DPS-1 at ¶ 14.

12. Effects on Other Electric Distribution Utilities

a. VEC MOU

276. CVPS owns certain transmission facilities (referred to herein as the "Irasburg-East Fairfax Transmission Facilities") that run from Irasburg to East Fairfax, through VEC's service territory. The Irasburg-East Fairfax Transmission Facilities feed VEC substations and interconnections in the towns of Lowell, Eden, Johnson, and Cambridge. The Irasburg-East Fairfax Transmission Facilities serve, directly or indirectly, eight VEC substations and/or metering points, none of which has an alternative means to be served in the event of a CVPS transmission line outage. Wright pf. at 2.

277. There are 5,211 VEC member/customer accounts served from these lines, including VEC's fifth largest consumer. These accounts represent approximately 13.83 percent of VEC's total retail accounts. The Irasburg-East Fairfax Transmission Facilities also provide service to Hyde Park and the Village of Johnson Water & Light Department ("Johnson") as well as to several CVPS substations. VEC estimates that each utility's percentage share of the load served by the Irasburg-East Fairfax Transmission Facilities is roughly 70 percent VEC, 10 percent CVPS, 10 percent Hyde Park, and 10 percent Johnson. Wright pf. at 2-3.

278. VEC contends that the Irasburg-East Fairfax Transmission Facilities have had a poor reliability record mainly due to the lack of automated switching capabilities and the remoteness of the nearest service center. These alleged deficiencies have resulted in many, and unnecessarily lengthy, outages for VEC customers. Wright pf. at 3.

279. Under the VEC MOU, VEC and GMP agreed to commence negotiations immediately with the goal of agreeing to a mutually acceptable model for the ownership and operation of the Irasburg-East Fairfax Transmission Facilities by July 15, 2012. The parties agreed to consider all viable models for ownership and operation, prioritizing those models that best serve the interests of the customers served by the Irasburg-East Fairfax Transmission Facilities, including customers of Hyde Park and Johnson, from the perspective of reliability, serviceability and cost. Wright pf. at 5; Otley pf. reb. at 1; exh. VEC-JMW-1 at 3.

280. The VEC MOU provides that GMP will provide VEC with all information reasonably necessary to evaluate the Irasburg-East Fairfax Transmission Facilities, and that CVPS has

assured GMP that CVPS will provide any such information required from it. Exh. VEC-JMW-1 at 3.

281. The VEC MOU provides that any party may invite the DPS to participate in drafting and/or reviewing a negotiated agreement regarding this issue, and that if an agreement cannot be negotiated, either party may petition the Board to resolve the dispute pursuant to 30 V.S.A. § 214(b). Exh. VEC-JMW-1 at 3-4.

282. VEC has a history of successful collaboration with GMP to address similar operational issues. Wright pf. at 5.

283. The VEC MOU promotes the public good by providing an avenue for resolving reliability concerns that have persisted for many years, while allowing for recourse to Vermont regulators if a satisfactory agreement cannot be reached. Under the VEC MOU, the customers served by the Irasburg-East Fairfax Transmission Facilities may experience fewer and less lengthy outages. Wright pf. at 6.

b. Agreement for Joint Ownership, Construction and Operation of the Highgate Transmission Interconnection

284. Under the Highgate Agreement, decisions concerning the Highgate transmission interconnection ("Highgate Interconnection") are made by a management committee consisting of one representative appointed by each owner of the facility, with each owner having a percentage of votes equivalent to its ownership share in the project. The Highgate Agreement requires that decisions of the management committee be made by at least two owners representing a majority of ownership shares in the project. Exh. Board-9 at Section 1.1; Nolan pf. at 3.

285. Following completion of the proposed merger, there will be two remaining low-voltage transmission providers in Vermont, GMP and VEC. Nolan pf. at 4.

286. To ensure the interests of non-transmission-owning utilities are considered when decisions are made concerning the Highgate Interconnection, Section 1.1 of the Highgate Agreement should be amended to require the affirmative vote of at least three owners representing a majority of the ownership shares of the project. Nolan pf. at 5.

287. The Petitioners have agreed to work with the Highgate Joint Owners to amend the Highgate Agreement consistent with finding 286, above. Otley pf. reb. at 2.

c. CVPS-Hyde Park 3-Phase Service Agreement

288. The CVPS-Hyde Park 3-Phase Service Agreement dates back to the 1970s when the Board established electric utility service territories. Under that Agreement, CVPS serves a few customers located in Hyde Park's service territory. Mullett pf. at 5; tr. 3/27/12 at 162 (Mullett).

289. Contingent upon the closing of the proposed merger between CVPS and GMP, Hyde Park and GMP have agreed to negotiate in good faith to request Board approval to terminate the CVPS-Hyde Park 3-Phase Service Agreement. Mullett pf. at 5; Otley pf. reb. at 2.

d. Other VPPSA Agreements

290. VPPSA members have a variety of agreements, understandings and procedures with GMP and CVPS. These include, among others, development and updating of distribution standards, emergency back-up agreements and, in the case of the Village of Northfield Electric Department ("Northfield"), a comprehensive distribution system maintenance agreement with GMP. Mullett pf. at 5.

291. Petitioners have agreed that VPPSA members' currently existing agreements, understandings, and procedures with GMP and CVPS will remain in place, and that none will be changed or terminated without notice and an opportunity to negotiate in good faith. Mullett pf. at 5-6; Otley pf. reb. at 2.

e. WEC Sub-Transmission Rates

292. Seven out of eight WEC substations are served by sub-transmission lines owned by GMP. WEC also has a metering tap from a three-phase line owned by GMP. Patt pf. at 19.

293. In their FERC filing for approval of the CVPS-GMP merger, Petitioners have proposed to merge GMP's sub-transmission tariffs with CVPS's. Patt pf. at 20.

294. WEC estimates that the planned merger of GMP's and CVPS's sub-transmission tariffs will increase WEC's sub-transmission rates by approximately 70 percent or $128,000 per year. This represents almost 1 percent of WEC's rates. Patt pf. at 20.

295. Merger-related savings will not be passed on to wholesale customers in the same manner as they will be passed on to retail customers. The wholesale component of transmission expenses will be passed on to the open access transmission tariff ("OATT") customers as the expenses either increase or decrease on a yearly basis after GMP has merged its OATT rates in a follow-on FERC proceeding under Section 205 of the Federal Power Act. Exh. WEC-Cross-45; tr. 3/21/12 at 170-171 (Reilly).

13. Effects on Competition

296. Since GMP and CVPS are authorized by the State to operate at the retail level in exclusive territories, the companies do not currently compete for retail customers. Powell-Reilly pf. at 17 (Reilly).

297. With respect to wholesale electric competition, GMP and CVPS are small, non-dominant players in the regional supply market. Powell-Reilly pf. at 17 (Reilly); Wilson pf. at 40.

298. Gaz Métro's acquisition of CVPS and the merger of CVPS into GMP is unlikely to result in an unacceptable level of wholesale power supply market concentration as ample generation imports from multiple suppliers located in other New England states, New York and beyond should be competitively available to fulfill future market-supply requirements. Wilson pf. at 40.

299. FERC has reviewed the acquisition and merger and concluded there will be no adverse impact on wholesale competition, finding among other things that the effect of the merger on wholesale electric competition in the relevant ISO-New England geographic market is *de minimis*. Exh. WEC-Cross-14 at 13.

300. Because Gaz Métro and its affiliates already own Vermont Gas, the state's only retail gas distribution utility, as well as GMP, the acquisition of CVPS could reduce or eliminate the

potential for independent "intermodal" gas/electric competition for major business and residential energy needs in a significant portion of the state. Wilson pf. at 41.

301. NNEEC and Gaz Métro operate Vermont Gas and GMP as two separate, independently managed companies. Despars pf. at 6.

302. NNEEC has owned both GMP and Vermont Gas since 2007, and none of the electric distribution utilities that have overlapping service territories with Vermont Gas expressed concern about gas/electric competition in the past or the likelihood of such competition in the future. BED has not had concerns about competition and cited only one instance of competition from Vermont Gas for residential, commercial or industrial customers. BED is also generally not concerned about such competition in the future. Tr. 4/4/12 at 183-85 (Nolan).

303. None of the industrial customers and none of the organizations that represent industrial, commercial or residential customers that are parties to this proceeding raised a concern about the effect of the acquisition on potential gas/electric competition. Ms. Doyle testified for IBM, which is currently in the service territory of both GMP and Vermont Gas, that IBM had not had and did not have any concerns about the absence of such competition. Tr. 3/27/12 at 54 (Doyle).

14. Other Effects of the Proposed Transactions

304. The acquisition and merger will eliminate "yardstick" comparisons between CVPS and GMP within Vermont and lessen the ability of consumers and regulators to make comparative performance and cost evaluations of their electric suppliers and other power suppliers who are similarly situated. Future comparisons between the Combined Company and large electric power distribution companies in New England and other states are not likely to be as meaningful as historic comparisons with a similar investor-owned utility operating in the same state. Wilson pf. at 40-41.

305. VELCO forecasts between $400 and $500 million of additional infrastructure investment in the next five years. Gaz Métro's ownership of the Combined Company would provide additional assurance to VELCO that needed funds will be available for these transmission upgrades given GMP's solid record since it was acquired by Gaz Métro of not only funding its share of transmission upgrades as required, but also of stepping up to fill the breach

when other distribution utilities could not, or would not, respond to equity calls. Tr. 3/28/12 at 97-98 (Dutton).

15. Consistency with Vermont Energy Plan and Comprehensive Energy Plan

306. The 2005 Vermont Electric Plan, which was in effect at the time of Petitioners' filing, states, in part, that "[c]ontinued consolidation of both large and small companies, or opportunities for shared service capacities, to achieve competitive economies of scale, may be desirable over this 20-year planning period." Hopkins pf. at 7.

307. Although the 2005 Vermont Electric Plan recommends further study of the issue of utility consolidation, the proposed merger will further State objectives by creating cost-saving opportunities and improved service. The consolidation of GMP and CVPS, with appropriate conditions, will be consistent with the 2005 Plan. Hopkins pf. at 7; Powell-Reilly pf. at 27 (Powell).

308. Although the subject of utility consolidation was not specifically addressed in the 2011 Comprehensive Energy Plan, the merger and other proposed transactions are consistent with the Electric Plan that is embodied in the 2011 Comprehensive Energy Plan. Tr. 3/29/12 at 100-102 (Hopkins).

16. Financial Integrity Proposals ("Ring Fencing")

309. Under paragraph 22 of the DPS MOU and paragraph 7 of the IBM MOU, GMP agrees to implement cost allocation and affiliate transaction conditions, which would remain in effect unless and until modified by the Board. Exh. Pet.-DPS-1 at ¶ 22; exh. Pet.-Cross-15 at ¶ 7.

310. The Combined Company will remain structurally separate and be operated as a stand-alone company. If GMP seeks to change from operating in this manner, GMP and/or NNEEC will seek prior approval from the Board. Exh. Pet.-DPS-1 at ¶ 22a.

311. GMP will continue to exist as a separate corporation and will maintain a complete set of financial books, records and reports separate from NNEEC, Vermont Gas, or Gaz Métro. If GMP seeks to change from operating in this manner, GMP and/or NNEEC will seek prior approval from the Board. Exh. Pet.-DPS-1 at ¶ 22b.

312. GMP will maintain separate bank accounts from its affiliates and will not commingle GMP funds with funds of affiliates. Exh. Pet.-DPS-1 at ¶ 22c.

313. The DPS MOU and the IBM MOU propose that the following standards would be applied to transactions with the Combined Company's affiliates.

> i. GMP will provide notice of, and will file copies upon request, all contracts with affiliates of $100,000 or more.
>
> ii. GMP transactions of $100,000 or more with affiliates will be effected through arms-length contracts that can be competitively compared and evaluated (see also cost-based accounting below).
>
> iii. GMP will record transactions with affiliates based on the actual cost of the product or service (i.e., net book value and/or reflecting labor rates with appropriate allocations of overhead and benefit costs) underlying such transaction, except that transactions for which there is a readily-available market price will be recorded at fair market value or actual cost, whichever is more beneficial for GMP's ratepayers.
>
> iv. GMP transactions with affiliates will be documented by invoice or other documentation describing the service or product underlying the transaction and including support for the amount of payment. GMP will report these affiliate transactions on an annual basis in a report to the Department and the Board.
>
> v. GMP will not write loans to any affiliated company that is not also rate regulated under a U.S. or Canadian jurisdiction. For any loans between GMP and affiliates that are subject to Canadian rate regulation, GMP will seek Board approval before any loans are written.

Exh. Pet.-DPS-1 at ¶ 22d; exh. Pet.-Cross-15 at ¶ 7.

314. The DPS MOU proposes that the following standards would be applied to distributions and transfers between the Combined Company and its affiliates.

> i. Distributions or transfers of assets and liabilities in excess of $100,000 from GMP to NNEEC or other affiliates must be approved in a documented vote by GMP's board of directors.
>
> ii. Distributions and transfers of assets and liabilities from GMP to NNEEC or other affiliates will comply with Vermont law and with GMP's Articles of Incorporation and Bylaws.
>
> iii. GMP will provide 30 days' advance notice to the Board and the DPS if (1) any planned transaction or distribution would result in the equity portion of the capital structure of GMP varying by more than three percentage points from the structure approved in GMP's latest rate proceeding; or (2) GMP's unused, short-term

> borrowing capacity falls below $25 million; or (3) GMP makes distributions to NNEEC or other affiliates after GMP has been placed on Credit Watch with negative implications if GMP's credit rating is below BBB (S&P) or Baal (Moody's). If advance notice is not reasonably possible, GMP will give such notice as soon as practicable.

Exh. Pet.-DPS-1 at ¶ 22e.

315. GMP will conduct its business affairs in a manner that prevents subsidization of affiliates by GMP. Exh. Pet.-DPS-1 at ¶ 22f.

316. GMP will not make any distribution to its parent or to any affiliates that would cause GMP's equity capital to fall below 45 percent of GMP's total capitalization without first obtaining Board approval, except to the extent that the Board imputes a lower equity percentage for ratemaking purposes. The Board may reexamine this minimum common equity percentage as financial conditions change, and may determine that it be adjusted. Exh. Pet.-DPS-1 at ¶ 22g.

317. GMP will provide the Board and the Department access to all written information which pertains to GMP, including electronically-stored documents, that is provided by Gaz Métro, NNEEC, or NNEEC subsidiaries to bondholders or credit rating analysts. Such information includes, but is not limited to, reports provided to, and presentations made to bondholders and credit-rating analysts. GMP may seek protection of the information. Exh. Pet.-DPS-1 at ¶ 22h.

318. GMP will notify the Board and Department of:

> i. Its intention to transfer an amount that is more than 10 percent of GMP's total stockholder equity to its parent or affiliates (or any combination thereof) over a 12-month period, at least 60 days before such a transfer begins;
>
> ii. Its intention to declare a special cash dividend from GMP, at least 30 days before declaring each such dividend;
>
> iii. All regular common stock cash dividends from GMP within 10 days after declaring each such dividend; and
>
> iv. Its intention to make a loan to an affiliate 30 days before making such a loan.

Exh. Pet.-DPS-1 at ¶ 22i; *see* also, Wilson pf. at 48-49; Bugbee pf. reb. at 3.

319. GMP will notify the Board and the Department prior to any transfer, sale, lease, encumbrance, or other disposition of GMP's utility property that is not otherwise subject to Board approval and that (1) has a net book value in excess of $5,000,000 which is included in Vermont

rate base, and (2) has costs recovered through rates regulated by the Board. Exh. Pet.-DPS-1 at ¶ 22j.

320. The proceeds of any new financing that is secured by GMP assets which either (1) are included in Vermont rate base, or (2) have costs recovered through rates regulated by the Board, must be used for utility purposes. Exh. Pet.-DPS-1 at ¶ 22k.

321. The DPS MOU provides that nothing in the DPS MOU will be deemed to restrict the Department or the Board, consistent with their existing regulatory authority, to seek or initiate an investigation if deemed appropriate on any of the cost allocation or affiliate provisions contained in, or filings required under paragraph 22 of the DPS MOU. Exh. Pet.-DPS-1 at ¶ 22l.

322. GMP will provide its monthly financial reports to the Board and the Department. Bugbee pf. at 6.

323. For the interim period between the closing of the acquisition of CVPS and the closing of the merger of CVPS and GMP, CVPS will be subject to various related conditions under section 5.15 of the Gaz Métro-CVPS Acquisition Agreement, including that: (1) CVPS will (i) maintain separate debt instruments and maintain its own corporate and debt credit rating, as well as a rating for long-term debt, and (ii) absent approval by the Board, not declare or pay any dividends on its capital stock if such dividends would result in a capital structure that would reduce the percentage of equity below the percentage reflected in the capital structure in CVPS's most recent forecasted capitalization to the Board; and (2) CVPS will (i) not lend to, guarantee, or financially support its parent or affiliates, or any subsidiary or joint venture of CVPS, unless approved by the Board, (ii) maintain banking and cash management arrangements separate from other affiliates, (iii) not enter into transactions with affiliates on terms less favorable to CVPS than those available from third parties on an arms-length basis, unless approved by the Board, and (iv) maintain books and records separate from other affiliates. Bugbee pf. at 7-8.

324. The DPS MOU substantially and adequately addresses ring-fencing issues. Tr. 3/27/12 at 80-81 (Wilson).

17. Windfall-Recovery Obligation, Proposed CEED Fund and Its Effects

a. Background

325. In Dockets 6460/6120, the Board required that CVPS's ratepayers receive fifty percent of the above-book proceeds of any sale or merger of CVPS, or sale of its regulated assets, subject to a cumulative limit of $16 million (adjusted by inflation). Dockets 6460/6120, Order of 6/26/01 at 72-73 (Order paragraphs 25 and 28).

326. In Dockets 6460/6120, the Board required that any procedure for returning funds to ratepayers must ensure that the benefit provided to ratepayers is in addition to (rather than a replacement for) other benefits appropriately assigned to ratepayers at the time of the future sale, merger or acquisition. Dockets 6460/6120, Order of 6/26/01 at 65.

327. The Dockets 6460/6120 provisions regarding the sharing of above-book proceeds with CVPS's ratepayers are nearly identical to provisions in the Board's Docket 6107 Order with respect to GMP and its ratepayers. Dockets 6460/6120, Order of 6/26/01 at 56-65.

328. The Docket 6107 provisions regarding sharing of above-book proceeds with GMP's ratepayers were triggered by Gaz Métro's acquisition of GMP in 2007. Docket 7213, Order of 3/26/07 at 34.

329. In Docket 7213, the Board determined that the GMP Efficiency Fund was an acceptable mechanism for satisfying the Docket 6107 provisions regarding the sharing of above-book proceeds with GMP's ratepayers. Docket 7213, Order of 3/26/07 at 37.

b. CEED Fund

330. As part of the merger, the Petitioners propose to create the CEED Fund to satisfy the Dockets 6460/6120 windfall-recovery provisions. Under the CEED Fund, GMP and the Combined Company would invest in projects intended to result in positive net benefits for customers within the current CVPS service territory. These projects may include new and existing efficiency programs (including thermal efficiency programs), renewable and clean energy programs, other demand resources, and new and innovative technologies. Griffin pf. reb. at 10-12; exh. Pet.-DPS-1, ¶ 18 and Attachment II at 1.

331. The DPS MOU provides that the CEED Fund would be capitalized with an amount equal to the windfall-recovery amount established in Dockets 6460/6120: $16 million, adjusted for inflation since 2001 ("Required Investment"). As of December 31, 2011, the Required Investment equaled $20.9 million. Griffin pf. reb. at 11; exh. Pet.-DPS-1, Attachment II at 1.

332. Under the DPS MOU, the Petitioners would be required to provide net customer benefits equal to or greater than 1.2 times the Required Investment through investments in the CEED Fund, with interest accruing at the rate of inflation on uninvested amounts until the Required Investment has been made. Exh. Pet.-DPS-1, Attachment II at 1, 4.

333. The DPS MOU provides that expected net benefits for approved CEED Fund projects will be calculated by deducting aggregate costs from aggregate benefits. Aggregate costs include CEED Fund investments, participating customer investments, and costs associated with project delivery mechanisms, performance monitoring (including DPS audits), benefits measurement and reporting, and any other administrative costs charged by any contracted parties relating to CEED Fund investments. Aggregate benefits from CEED Fund investments may include, among other things, energy and capacity savings, avoided investments in infrastructure, reduced supply risk resulting from fossil fuel and geographic diversity, comparative savings when compared with similar technologies, environmental benefits (emission reductions), economic development benefits and other customer savings (water, fossil fuel) as applicable. Exh. Pet.-DPS-1, Attachment II at 4.

334. Under the DPS MOU, each project funded by the CEED Fund would need to meet a "but for" test demonstrating that the project would not have been undertaken or would not have received incremental funding in the amount provided by the Fund in the absence of the CEED Fund investment; thus, no efficiency project would be submitted that would otherwise be funded through an Energy Efficiency Utility or undertaken by the Combined Company under applicable statutes or regulations. Exh. Pet.-DPS-1, Attachment II at 2; Griffin pf. reb. at 11.

335. The DPS MOU provides that GMP or the Combined Company, through the CEED Fund, will invest $6 million in Vermont's Weatherization Program before December 1, 2012, and at least an additional $4 million in Vermont's Weatherization Program before December 1, 2013. These services will be delivered by the community action agencies. If the Board were to approve

the DPS MOU, these investments would be considered to have been approved by the Board. Exh. Pet.-DPS-1 at ¶ 19; tr. 4/3/12 at 129-131 (Griffin).

336. Under the DPS MOU, the Combined Company, through the CEED Fund, will invest at least $2 million in thermal efficiency improvements before December 1, 2013, for customers who do not qualify for Vermont's Weatherization Program. The specific manner in which these services will be provided will be discussed in a stakeholder process and submitted to the Board for approval. Exh. Pet.-DPS-1 at ¶ 19; tr. 4/3/12 at 132-133 (Griffin).

337. The DPS MOU provides that the remaining monies in the CEED Fund will be invested in projects reviewed in a stakeholder process, consisting of recurring scheduled meetings, open to all interested parties and intended to inform the decision-making regarding allocation of the monies. Based on information provided in the stakeholder process, and consistent with the need to provide sufficient net benefits to customers, the Combined Company would select projects to file with the Board for approval. The Combined Company would describe in detail in the filing the projected investment and estimated net benefit amount, the delivery mechanism, and the plan for performance monitoring (including DPS audits), benefits measurement and reporting. Exh. Pet.-DPS-1, Attachment II at 2.

338. The DPS MOU provides that GMP's and the Combined Company's investment in each Board-approved project will be amortized over 10 years and the unrecovered amount will be included in rate base. Exh. Pet.-DPS-1, Attachment II at 1, 5.

339. The Combined Company intends to hire subcontractors where appropriate to manage implementation of CEED Fund programs. For energy efficiency programs, the Combined Company expects to contract with the Vermont Energy Investment Corporation ("VEIC")[20] for delivery of approved efficiency project services and reporting of the results to the Board and participants in the stakeholder process. For renewable investments, and new and emerging technologies, the Combined Company will coordinate with the DPS or its contractor for the delivery of approved renewable and clean energy investments and reporting of the results to the Board and participants in the stakeholder process. Exh. Pet.-DPS-1, Attachment II at 4-5.

20. VEIC serves as Vermont's statewide Energy Efficiency Utility, known as Efficiency Vermont pursuant to the terms of the Board's December 20, 2010, Order of Appointment.

340. Under the DPS MOU, weatherization and other projects funded by the CEED Fund will take place within the former CVPS service territory and must benefit the Combined Company's customers who are located in the former CVPS service territory. Exh. Pet.-DPS-1, Attachment II at 2; tr. 4/3/12 at 70 (Griffin).

341. The Combined Company intends to provide the required benefit amount to customers within seven years after a Board order approving the CEED Fund and the DPS MOU. If, at the end of that time period, the Combined Company has not provided the full required benefit, within 90 days thereafter the Combined Company would file a plan for Board approval specifying how the remaining benefits will be delivered. If, at the end of that time period, the Combined Company has not made the Required Investment, any shortfall will be provided to former CVPS customers on a uniform percentage basis in the form of a bill refund. Exh. Pet.-DPS-1, Attachment II at 3-4; Griffin pf. reb. at 11-12.

342. The DPS MOU provides that, by November 15 of each year, the Combined Company will submit an annual plan to the Board for its review. The annual plan will describe each proposed project, the projected investment, the requested benefit and cost calculation methodology, the net benefit amounts expected from adoption of such benefit and cost calculation methodology, and the delivery mechanism. At the same time, the Combined Company will submit an annual report that includes previous amounts invested by year, the net benefit results by year net of any performance monitoring adjustments, if applicable, and the expected amount of remaining net benefits due customers on December 31 of the year of submittal. The annual report will also identify estimated inflation growth on uninvested amounts expected through December 31 of the year of submittal. Exh. Pet.-DPS-1, Attachment II at 5.

343. The DPS MOU provides that the Combined Company will support an independent review of the CEED Fund to be undertaken after the third year of the Fund's operation, if the Board orders such a review. The review would evaluate CEED Fund performance and suggest improvements to program design and/or execution. Exh. Pet.-DPS-1, Attachment II at 5.

344. Under the DPS MOU, CEED Fund investments will be made in rough proportion to customer classes of CVPS customers, with the intention of achieving net benefits in rough proportion as well. Exh. Pet.-DPS-1, Attachment II at 2.

345. Efficiency Vermont's non-residential retrofit programs are projected to produce societal net benefits of between 2.71 and 2.93 over the next five years, while Efficiency Vermont's residential non-low-income retrofit programs are projected to produce societal net benefits of between 1.03 and 2.12 over the same time period. Exh. Pet.-JJP-2.

c. Comparison with GMP Efficiency Fund

346. Both Fortis and Gaz Métro were aware of the Board's Order in Docket 7213 that allowed GMP to satisfy the Docket 6107 windfall-recovery provisions through the benefits provided to customers from rate-recoverable investments in energy efficiency measures. Fortis considered using a similar investment approach to satisfy the Dockets 6460/6120 windfall-recovery provisions in connection with its proposed acquisition of CVPS. Exh. Pet.-Cross-13 at 16; tr. 4/3/12 at 152 and 171-172 (Reilly).

347. The CEED Fund is modeled after the GMP Efficiency Fund that the Board approved in Docket 7213. Griffin pf. reb. at 11; Powell-Reilly pf. reb. at 2; tr. 3/29/12 at 119 (Hopkins).

348. Both the GMP Efficiency Fund and the CEED Fund include: (1) a "but for" test for selecting projects; (2) a minimum investment requirement; (3) rate recovery of investments; (4) measurement and reporting requirements; (5) a seven-year deadline for achieving the required level of benefits; (6) Board approval of the methodology for calculating net benefits; and (7) a similar plan to address the consequences of failing to achieve the required investment or level of benefits. Griffin pf. reb. at 11-13.

349. Both the GMP Efficiency Fund and the CEED Fund allow funds to be invested in projects related to energy efficiency programs, renewable and clean energy programs, other demand resources, and new and innovative technologies. However, the GMP Efficiency Fund invested solely in energy efficiency projects and did not exercise the option to invest in other types of projects. Tr. 3/22/12 at 202-203 (Griffin).

350. When the Board approved the GMP Efficiency Fund, it expressed concern with using those funds to invest in thermal efficiency. The GMP Efficiency Fund had difficulty finding sufficient residential electric efficiency opportunities to provide the required benefits to that customer class. As a result, the GMP Efficiency Fund has made significant investments in

thermal efficiency projects that provide more limited electric benefits. Docket 7213, Order of 3/26/07 at 39; tr. 3/22/12 at 79-80 (Plunkett); Hopkins pf. sur. at 8.

351. Both the GMP Efficiency Fund and the CEED Fund will calculate net benefits for energy efficiency investments using the measurement methodology that VEIC currently uses in administering Efficiency Vermont projects. Exh. Pet.-DPS-1, Attachment II at 4; Docket 7213, Order of 3/26/07 at 19 (findings 67-68).

d. Inclusion of Thermal Efficiency in CEED Fund

352. The greatest opportunities for the Combined Company to increase cost-effective efficiency investment are in thermal efficiency retrofits to residential buildings heated with unregulated fuels, and in electric and process-heating efficiency upgrades in businesses. Plunkett pf. reb. at 8; tr. 3/22/12 at 18 (Plunkett).

353. The combination of thermal efficiency retrofits and innovative financing mechanisms provides an opportunity to achieve greater net benefits for CVPS ratepayers in a way that minimizes the use of ratepayer funds to acquire those benefits. Tr. 3/22/12 at 55 (Plunkett).

354. Thermal efficiency measures can produce electric savings. The two most notable sources of electric energy savings due to thermal efficiency are more efficient electric components of home heating systems (such as fans and pumps) and reduced air conditioning demand. These measures also produce system benefits because they are highly likely to be running at the time of a winter or summer peak, respectively, and reducing peak demand reduces the need for more grid infrastructure and system capacity, the costs of which are shared among all ratepayers. Exh. AARP-Cross-27 at 4.

355. Vermont's Weatherization Program is run by the state Office of Economic Opportunity ("OEO"), which oversees the community action agencies that disburse the Weatherization investments according to detailed rules regarding eligibility and acquisition of services. Tr. 4/4/12 at 89-90, 93 (Miller).

356. The Weatherization program is a mature program that: (1) has been in place for years; (2) already has detailed rules regarding eligibility and acquisition of services; and (3) already has a waiting list for services. Tr. 4/4/12 at 89-90, 97-98 (Miller).

357. Vermont's Weatherization Program produces electric savings in addition to savings in other fuels. Tr. 3/29/12 at 79 (Hopkins).

358. Participants in the Weatherization Program under the CEED Fund could expect average annual reductions in their electric bills of at least $78. Tr. 3/29/12 at 92 (Hopkins); exh. AARP-Cross-32, Attachment 1.

359. Under the DPS MOU, investments in Weatherization and thermal-efficiency programs delivered by December 1, 2013, will be deemed to have a customer benefit of 1.2 times the amount of the investment, and this benefit will be counted towards the benefit amount required to be provided to customers. Exh. Pet.-DPS-1 at ¶ 20.

360. The 1.2 benefit to investment ratio is a conservative estimate of the benefits that will be realized by CVPS customers as a result of the Weatherization investments. Tr. 3/29/12 at 130 (Hopkins).

361. It is appropriate to deem the benefits of Weatherization and thermal-efficiency programs delivered by December 1, 2013, rather than verifying those benefits, because the potential overhead costs necessary to perform the measurement and verification of the one-time Weatherization investments could be greater than would be appropriate, particularly since the deemed benefit value is conservative. Tr. 3/29/12 at 131 (Hopkins).

e. Other Proposed Means of Satisfying the Windfall-recovery Mechanism

362. CVPS shareholders voted in favor of the acquisition by Gaz Métro on the condition that they receive $35.25 per share. If CVPS cannot deliver $35.25 per share to its current shareholders, it cannot close the transaction. Tr. 3/21/12 at 161 (Reilly).

363. Under Section 6.3(c) of the Gaz Métro-CVPS Acquisition Agreement, CVPS is not obligated to effect the sale of CVPS if a Board order contains any term that has the effect of reducing the price to be received by CVPS shareholders. Exh. Pet.-Cross-14, Gaz Métro-CVPS Acquisition Agreement at 51.

364. Section 5.5(d) of the Gaz Métro-CVPS Acquisition Agreement provides for Gaz Métro to assume the windfall-recovery obligation in the place of CVPS shareholders. Exh. Pet.-Cross-14, Gaz Métro-CVPS Acquisition Agreement at 41.

365. Section 8.4 of the Gaz Métro-CVPS Acquisition Agreement provides that the implementation of the Dockets 6460/6120 windfall-recovery mechanism and the sharing of proceeds with CVPS's ratepayers pursuant to this mechanism is excluded from the definition of "Company Material Adverse Effect." Exh. Pet.-Cross-14, Gaz Métro-CVPS Acquisition Agreement at 58-59; tr. 4/3/12 at 157-158, 160, 164 (Reilly).

366. Section 6.1(c) of the Gaz Métro-CVPS Acquisition Agreement includes a requirement that regulatory approvals and conditions, individually or in the aggregate, not be reasonably expected to have a material adverse effect on NNEEC, the surviving corporation and the NNEEC subsidiaries, taken as a whole. This section does not use the defined term Company Material Adverse Effect. Exh. Pet.-Cross-14, Gaz Métro-CVPS Acquisition Agreement at 50; tr. 4/3/12 at 158-159; 164 (Reilly).

VII. DISCUSSION

A. General Discussion and Overview of the Merger and the Other Proposed Transactions

The proposed merger of Vermont's two largest electric utilities, CVPS and GMP, into one regulated utility company, the resulting consolidation of their service territories, and the other proposed transactions are matters of great import for customers of the two companies and the state.

As a general proposition, many have long believed that the combination of these two investor-owned utilities could bring significant benefits to customers of the two companies and, more generally, to the State of Vermont. It is noteworthy that none of the 17 intervening parties in this proceeding, who represent a broad and diverse range of interests and views, opposes the acquisition of CVPS and the merger of CVPS and GMP in principle (although some of the parties oppose certain aspects of the current proposals).

A combination of CVPS and GMP has long been of interest to Vermont regulators and industry observers for a number of compelling reasons, primarily related to electric-rate savings and improved service to customers. The benefits of such a combination may seem evident after even a brief glance at a map of electric utility franchise areas in Vermont, which reveals a patch quilt of contiguous service territories served by GMP and CVPS throughout many parts of the state.[21] Not only are the respective service territories of GMP and CVPS almost entirely contiguous, but their respective service territories also include several geographic areas of the state that are closer to the service territory of the other company than to the rest of their own service territory .

As separate utilities, each with exclusive rights to provide electric service within their respective service territories, there is considerable duplication of costs and functions for these utilities that is paid for by their customers in electric rates. Such duplication of costs and functions occur in management, operations, finance, accounting, information technology and legal, regulatory and consulting services. A merger would potentially allow for enhanced efficiencies and the kind of large and enduring cost reductions in operations, administration and management that are rarely available.

A combination would also enable the merged company to take advantage of the relative strengths and to address the relative weaknesses that each company would bring to the merger in terms of directorial oversight, management, corporate culture, finance, operations, customer service, and regulatory compliance, transparency and responsiveness. The combination of the two companies also would create a regulated utility that is more balanced in terms of rural and non-rural residential customers and that would have less concentration risk and a greater diversity of commercial and industrial customers.

Even after a consolidation, the Combined Company still would be a relatively small, investor-owned electric utility by both regional and national standards. While the combined utility would serve about 70 percent of Vermont's electric load, this would constitute less than four percent of New England's electric load. Following the merger, the Combined Company would still be one of the ten smallest investor-owned utilities in the United States based on combined 2007 revenue.[22]

Although we support the concept of combining CVPS and GMP for many of the reasons noted above, this combination is not occurring in the abstract. Rather, it is occurring within a

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21. See Exh. Pet.-BO-1.

22. Edison Electric Institute, *Profiles and Rankings of Shareholder-Owned Electric Companies*, (July 2008) at 117.

particular transactional context subject to specific terms and conditions that were negotiated by the parties. Most significantly, this acquisition and merger proposal comes before us after a vigorous and expensive bidding competition for CVPS that involved Fortis, another unidentified company, and Gaz Métro. And Gaz Métro – the ultimately successful bidder for CVPS and the indirect owner of GMP – was the only bidder who could bring about a combination of CVPS and GMP and thereby capture the substantial benefits for electric utility customers and the state resulting from such a combination.

Even within its transactional context, however, the Proposed Transaction provides an unprecedented opportunity for substantial and permanent cost reductions resulting from the combination of CVPS and GMP, which would be reflected in customer rates for decades. The proposal to guarantee customer rate benefits of $144 million, with $15.5 million of rate benefits being guaranteed in the first three years after the merger, make a portion of these anticipated benefits tangible and explicit. In evaluating the merits of the Proposed Transaction and its terms, we have given careful consideration to the contextual circumstances and to the risks to the entire transaction if we were to impose conditions on the Proposed Transaction that would substantially affect its economic terms.

The proposals related to the acquisition and subsequent merger, nonetheless, do raise significant issues which require careful consideration. The most important of these generally relate to the shared savings proposal, VELCO ownership, control and governance issues, and the satisfaction of the windfall-recovery provisions in the Board's Dockets 6460/6120 Order (related to the furnishing of benefits to ratepayers if CVPS's shareholders were unjustly enriched in a future sale or merger).

Some of these issues directly result from, or are made more difficult by, the competition to acquire CVPS and the high bid price Gaz Métro was required to offer CVPS public shareholders, in light of competing bids, in order to have its offer accepted by CVPS and for it to be able to deliver the anticipated benefits arising from the merger of CVPS and GMP.[23]

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23. Gaz Métro's offer at a price of $35.25 per share was ultimately deemed superior by CVPS's board of directors to Fortis's offer at $35.10 per share. At $35.25 per share, the total acquisition price to be paid by Gaz Métro for CVPS's outstanding common stock will be about $475 million, or about $200 million more than the market value of (continued...)

Although issues related to the $20.9 million Dockets 6460/6120 windfall-recovery provisions have received the most focus, the shared savings plan under which GMP's shareholder could receive $82.4 million or more of merger savings that would otherwise flow to customers of the Combined Company over the next eight years presents a larger economic issue for ratepayers.

As a result of the competitive bidding process for the publicly traded shares of CVPS (a process over which state regulatory authorities have no control), there is no doubt in the short term that CVPS shareholders (including some current and former officers and directors of CVPS) will receive the most significant benefits from the acquisition of CVPS (whether by Gaz Métro or, under the terms of the earlier proposal, by Fortis).[24] It is also clear that the immediate out-of-pocket costs of this acquisition for Gaz Métro, the proposed acquirer of CVPS, will be quite significant (given the premium over the prior market prices of CVPS shares and other costs). While this acquisition and merger may turn out to be quite profitable for Gaz Métro in the long term if savings from the merger are as, or greater than, projected, its upfront costs will be substantial and it seems less certain of receiving net benefits from this transaction in the short or intermediate term than either CVPS's shareholders or customers of CVPS and GMP.

B. Acquisition of CVPS, Merger of CVPS with GMP, and Other Proposed Transactions

1. Suitability of Acquirers of Controlling Interests

In making its required determinations of the public good in connection with acquisitions and mergers, one of the important considerations for the Board is the suitability of the acquirers and merger partners based on a review of relevant attributes in light of the circumstances. Typically, this has involved an assessment, as appropriate, of technical and managerial competence, of financial strength and soundness, and of matters related to past conduct and

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23. (...continued)
those shares in November 2010. In addition, Gaz Métro has already reimbursed CVPS for $19.5 million in termination payments CVPS was required to pay to Fortis under its earlier acquisition agreement with Fortis. *See* exh. Pet.-Cross-14 (Proxy Statement at 24-35).

24. CVPS's shareholders will receive $35.25 for each share of common stock owned by them, a per-share price that is more than $15 greater than the share price ($20.13) at which shares were trading on the New York Stock Exchange prior to the first unpublicized offer to acquire CVPS in November 2010.

reputation such as a history of fair dealing, trustworthiness, and being of good character or a good corporate citizen.

The evidence required for the technical and managerial competence of an acquirer or owner will vary depending on the degree to which an acquirer or owner plans to be actively involved in the operations and management of the utility business. As has been the case with its ownership of GMP and Vermont Gas, Gaz Métro has committed to maintain the Combined Company as a structurally separate entity that will be operated as a stand-alone company and directed by its own management and board of directors. Neither NNEEC nor Gaz Métro will actively manage the Combined Company.[25]

Accordingly, a determination of technical competence in this instance rests primarily on the technical competence and ability of the Combined Company following the merger to operate the electric system in a safe and reliable manner while charging customers just and reasonable rates. However, the established record of NNEEC and its parent, Gaz Métro, in owning regulated utility businesses in Vermont is also relevant to this assessment. In general, they have demonstrated financial and managerial competency in their ownership of Vermont utilities.[26]

The record also indicates that Gaz Métro is financially sound, and that its financial strength would provide ample ability to support the capital needs of the Combined Company. For fiscal year ended as of September 30, 2011, Gaz Métro's revenues were approximately Cdn $1.96 billion, its total assets were approximately Cdn $3.73 billion, and net partners' equity was Cdn $1.01 billion. Its first mortgage bonds are rated A by Standard & Poor's and DBRS Limited. Over the last five years, Gaz Métro's cash flow from operations, which has averaged Cdn $270 million after capital investments for maintenance, has allowed the company to invest over Cdn $200 million in development projects over the same period.

Gaz Métro also benefits financially from an apparently good relationship with, and access to capital from, its ultimate majority owner, the Caisse. The Caisse is the largest institutional fund manager in Canada and it makes its investments consistent with the long-term investment objectives of its pension-fund clients. As an indirect investor in Gaz Métro, the Caisse is aware

25. Despars pf. at 6-7; exh. Pet.-DPS-1 at ¶ 22(a).

26. Hopkins pf. at 5; Despars pf. at 4; tr. 3/28/12 at 97 (Dutton).

of and fully supports Gaz Métro's strategic plan, is providing additional equity capital to Gaz Métro to help fund the acquisition of CVPS, and is generally committed to Gaz Métro's business activities, including its investment in the Combined Company.[27]

NNEEC and Gaz Métro have an established record as owners of Vermont Gas for more than 27 years and GMP since 2007. This history and experience generally supports the conclusion that, in their ownership of the Combined Company, NNEEC and Gaz Métro will be a fair partner for Vermont.[28]

Since acquiring GMP in 2007, Gaz Métro has invested $46 million in GMP. Separate and apart from the CVPS acquisition, Gaz Métro has committed to invest $75 million in GMP to allow GMP to pursue investments in renewable energy generation, smart grid implementation, and transmission upgrades through the VELCO Companies.[29] One benefit of having a financially strong owner is demonstrated by GMP's record since 2007 of not only funding its share of transmission upgrades as required, but also of providing additional funding for necessary transmission projects when other distribution utilities could not, or did not, respond to equity calls. This is an important consideration, given that VELCO is facing a need to fund at least $400 million in additional infrastructure investments in the next five years.[30]

We received many comments from the public expressing the desirability of Vermont-ownership for Vermont utilities and otherwise raising concerns about foreign ownership of GMP by a Canadian company. Due to the volume of public comments we received, we took care to examine this issue closely in our proceedings.

Contrary to public perception, it has been several decades since Vermont's investor-owned utilities have been under predominantly Vermont ownership. Rather, an investor-owned utility such as CVPS is publicly traded on the New York Stock Exchange, where its shares are purchased and sold by owners who are largely unknown and unaccountable to Vermonters. Whether or not the Proposed Transaction is approved, the fact of out-of-state ownership of

27. Tr. 3/26/12 at 19 and 21 (Tall); tr. 3/26/12 at 31-32 (Despars); exh. GMP-1 at 8 and 11.
28. Hopkins pf. at 6.
29. Despars pf. at 4.
30. Tr. 3/28/12 at 97-98 (Dutton).

Vermont investor-owned utilities is likely to continue. These days, foreign ownership is simply a fact of life, as our world and our economy have become global in nature and orientation.

The more critical interest lies in ensuring that the focus and management of our utilities remains in Vermont. Approval of the Proposed Transaction serves this interest. This assessment is based on the established record of Gaz Métro as the owner of Vermont Gas for more than a quarter of a century, and its ownership of GMP for the last five years. During Gaz Métro's tenure, both of these utilities have been afforded the managerial and operational autonomy of stand-alone, Vermont-based companies. Neither company has been subjected to significant involvement or interference from their foreign owners in the conduct of their business activities. In this proceeding Gaz Métro has committed to managing the Combined Company in this same manner.

There have been some concerns expressed that Gaz Métro is interested in merging CVPS with GMP for the purpose of acquiring control over VELCO in order to bring more Canadian power down through Vermont to Southern New England. After taking testimony under oath on this issue in our proceedings, we are persuaded that there is no factual foundation for this concern. In addition, our evidentiary record squarely documents that Gaz Métro will not be able to control VELCO using the majority shareholder powers of the Combined Company because the Petitioners have agreed to dilute their combined majority interest by transferring stock and voting rights to VLITE. Even after the merger, the Combined Company will own a smaller percentage of VELCO's voting securities than CVPS currently owns. Furthermore, Gaz Métro is not an electric company and therefore has no electricity to sell or move through Vermont. Finally, even if Gaz Métro were to partner with an electric generation company such as Hydro-Québec in an attempt to exploit VELCO to move electric power through Vermont, such an undertaking would be highly unlikely to succeed, given the existing system capacity limitations and the regulatory policies in place at the federal level that prevent transmission system owners from favoring their own system-access interests over those of other utilities. As a transmission service provider, VELCO is bound by federal law that imposes open access tariff requirements. We are confident that the terms of the Proposed Transaction neither create nor increase any risk that Vermont's transmission backbone will become vulnerable to exploitation by foreign ownership interests.

2. Suitability of Merger and Compatibility of Service Territories

The large efficiency and service benefits that are projected or anticipated as a result of the merger of CVPS and GMP are based primarily on the contiguity of the two utilities' respective service territiories throughout most of the state.[31] Except in one area in central Vermont, their service territories are adjacent to each other.

Contiguous service territories exist in southern Vermont, in five areas along the Connecticut River and in some areas of central and northwestern Vermont. Each company, particularly GMP, also has franchise areas in the state that are more isolated from the rest of its service territory than from the service territory of the other company.[32] The compatibility of their respective service territories makes these two investor-owned utilities almost ideal candidates for consolidation from the standpoint of potential enhanced efficiencies and improvements in service quality.

The Combined Company will continue to operate as a stand-alone electric distribution company regulated by the Board following the merger. GMP will be the surviving company after the merger. Since Gaz Métro acquired GMP in 2007, GMP has continued to demonstrate its "ability to operate the electric system in a safe and reliable manner while charging customers just and reasonable rates."[33]

The Combined Company plans to make reductions in its workforce without layoffs of employees, except for certain executive officers. The proposed management structure of the Combined Company, under which some executive officers of CVPS will not be retained, is not likely to lead to any negative impacts on the operations of the Combined Company.[34] Other workforce reductions will be achieved through retirements and natural attrition.

There is nothing in the record to suggest that the Combined Company will not continue to provide satisfactory service. Nevertheless, it is conceivable (particularly in light of the incentives provided by the guaranteed and shared savings plans) that service quality problems could develop

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31. Otley pf. at 4-5; exh. Pet.-BO-1.
32. Exh. Pet-BO-1.
33. Hopkins pf. at 5.
34. Hopkins pf. at 5.

in the future as a result of workforce shrinkage or other integration plans related to the merger. If service quality and reliability problems were to develop in the future, the Board could order corrective actions by the Combined Company to resolve such problems.

Gaz Métro has provided testimony in this proceeding in which it indicates that it views the acquisition of CVPS and its ownership of the Combined Company as a strategic long-term investment. Because of NNEEC's and Gaz Métro's history with respect to GMP and Vermont Gas and their stated objectives with respect to the acquisition and merger, we expect that the Combined Company following the merger will continue to be well-managed and that the parent companies will provide the Combined Company with the necessary resources to maintain technical competence in operations, service, administration and management as well as with the funding for necessary investments to maintain or improve the delivery and reliability of service.

3. Effects of Merger

a. Enhanced Efficiencies and Shared Savings

The principal economic value of this proposed merger and the related transactions to retail electric customers in Vermont does not come from the $144 million in guaranteed rate benefits or the $25 million of net windfall-recovery benefits to CVPS customers. Significant as these may be in economic amount, they will merely represent one-time benefits for customers to the extent projected merger savings are not achieved and do not become permanent. The objective and expectation, however, is that customers will not be relying on the guarantees to realize rate benefits from the merger.

The real promise and economic benefits of the proposed merger for retail customers will come from operational efficiencies from the consolidation of the two companies and their largely contiguous service territories. The realization of the potential for operational efficiencies will lead to permanent cost reductions and enduring rate benefits to customers that would dwarf any one-time benefits.

One of the fundamental rationales for a consolidation of CVPS and GMP that has motivated its advocates for decades is the promise that O&M savings realized from such a consolidation in operations, administration and management will be large, permanent and enduring. Although power-supply costs are the biggest factor influencing electric rates, O&M costs are also an important factor. And, while power-supply costs fluctuate over time, true reductions in O&M costs have generally proven extremely difficult to achieve and maintain except in the context of a utility consolidation such as the proposed merger.

The Petitioners project that O&M cost savings alone resulting from the acquisition of CVPS and the merger of CVPS and GMP over a ten-year period will be about $226.4 million.[35] They expect that the merger will generate as much as $500 million of savings over a twenty-year period.[36] The promise of the proposed merger is that if projected savings are realized, customers of the Combined Company will pay rates as a result of the O&M savings that would be 5.82 percent lower than they would otherwise be, not just for one, three or five years, but continuing into the future. It is difficult to conceive of anything that CVPS and GMP could do as separate utilities that would bring anything close to that level of O&M cost savings on an enduring basis.

Although there is reason to be skeptical of oversold claims of synergies resulting from corporate mergers, the confidence Petitioners and the DPS have demonstrated in the existence of these savings and the ability of the Combined Company ultimately to extract them (even with a no-layoff policy for non-executive employees) is demonstrated by the Petitioners' agreement to guarantee $144 million of such savings to customers.

Both the Petitioners' initial proposal and the DPS MOU also provide for customers of the Combined Company to share a significant portion of the savings resulting from the consolidation of CVPS and GMP with the Combined Company. In the Board's view, there is no precedent in Vermont for the shared savings plan proposed in this proceeding. The Board also observes that, as of last May, CVPS was also of the view that there was no precedent in Vermont for the proposed sharing of savings.[37]

The cases cited by the Petitioners in their brief do not provide a precedent for the shared savings plan or generally for the recovery of acquisition premiums in rates as they involve the recovery of: (a) a portion of a $930,000 acquisition premium through the normal effect of

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35. Bugbee pf. at 3; exh. Pet.-DDB-2.
36. Bugbee pf. at 2-4.
37. Exh. Pet.-Cross-14 (Supplement to Proxy Statement at 3); tr. 4/3/12 at 196 (Reilly).

regulatory lag;[38] (b) certain transaction-related costs (but not the acquisition premium paid to the seller);[39] and (c) a portion of the acquisition premium paid by CVPS for non-franchise generation assets sold by VMPD in which non-affiliated customers of the seller received aggregate rate benefits that were about equal to their share of the acquisition premium based on load.[40]

It should be noted that the Petitioners are not seeking to include any costs of the CVPS acquisition in the rate base of the Combined Company. As the Department's consultant observed in his testimony, the Petitioners seek to recover an approximately equivalent amount from ratepayers using alternative mechanisms.

It is also important to emphasize that the Combined Company will not recover any portion of the acquisition premium paid to CVPS shareholders by Gaz Métro under the shared savings plan except to the extent there are merger savings, that is Actual O&M Costs are less than Base O&M Costs during the eight years after the merger. In addition, given the guarantee of $144 million in savings for customers, any shared savings received by the Combined Company during the eight-year term of the shared savings plan may eventually be recouped through bill credits, to the extent that customers of the Combined Company do not receive $144 million of savings in rates during the ten-year period after the merger. The Combined Company will not only have lower earnings than it would have if savings projections were met, but it will also ultimately have to make up for any shortfall in rate benefits to customers.

As such, the shared savings plan coupled with the guarantee do pose significant risks to the ability of the Combined Company to recover its $82.4 million share of the projected ten-year $226.4 million of O&M cost savings related to the merger. Customers of the Combined Company, on the other hand, are assured of receiving $15.5 million of rate benefits during the first three years after the merger and ultimately receiving $144 million of rate benefits even if the amount of merger savings is below projections.

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38. Docket 5396, *Joint Petition of CVPS and Allied Power & Light Company*, Order of 7/18/90 at 21-22. In another Order cited by the Petitioners, the findings specifically refer to "annual savings that will accrue to ratepayers" so the point Petitioners seek to make by citing it is unclear, unless their point is again to note the possible and normal regulatory lag that would occur before capturing those savings for ratepayers in the next rate case.

39. Docket 7171, *Joint Petition of CVPS and Rochester Electric Light & Power Co.*, Order of 8/22/06 at 5.

40. Docket 7660, *Joint Petition of VMPD and CVPS*, Order of 6/10/11 at 52-59 and 69.

We recognize the shared savings proposal represents a significant deviation from traditional ratemaking principles by including Base O&M Costs (the combined pre-merger O&M costs of the separate companies) in the Combined Company's cost of service, rather than actual O&M costs, for eight years. Our statutory mandate is to set rates that are "just and reasonable." This statutory standard affords the Board broad discretion in the manner in which we determine rates, provided that we balance the interests of ratepayers and the utility.[41] Under the circumstances of this case, we find that allowing GMP to set rates for a period of eight years using the Base O&M costs is reasonable as part of an overall transaction under which ratepayers are still guaranteed $144 million in savings over ten years. Using the Base O&M costs will permit GMP to include higher costs than it would under traditional ratemaking, as a means of allowing GMP and its owners to benefit from the reduction of O&M costs. But because of the guaranteed merger savings, it still produces rates materially lower than they would be otherwise. Moreover, to the extent that GMP can take advantage of the incentives to produce large and continuing O&M savings through this incentive, after eight years, these savings all will flow through to ratepayers.

As noted above, an acquisition of CVPS by any potential acquirer other than Gaz Métro (which currently owns GMP) would not bring with it the significant and enduring benefits of a consolidation of the two utilities. Similar to the 2007 acquisition by Gaz Métro of GMP (which, like CVPS, was a small publicly-traded company at the time), it is likely that an acquisition of CVPS by Fortis would have brought a financially-strong parent, increased financial stability, improved access to capital and ability to negotiate power-supply contracts without collateral requirements, and a not insignificant level of measurable savings for customers (estimated by CVPS at $2.5 to $3.0 million a year or $25 to $30 million over ten years). While additional information would be required about Fortis and about terms and effects of such an acquisition of CVPS, such an acquisition (much like the 2007 acquisition of GMP) might well support a finding of public good by the Board. Nevertheless, the possible benefits of such an acquisition of CVPS by Fortis are dwarfed not only by the potential benefits and opportunities of a merger with

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41. *See*, Docket 6107, Order of 1/23/01 at 16-18 for a discussion of the Board's discretion in the manner in which it sets rates.

GMP but just by the tangible and explicit benefits provided by the guarantees of savings to customers.[42]

It is also material to our consideration of the shared savings proposal that Gaz Métro was only able to acquire CVPS after an expensive bidding process in which it was required to top the already very substantial offer of Fortis, an acquirer that would only be able to deliver a fraction of the benefits to customers and the state. If Gaz Métro had been able to acquire CVPS at close to the price of its offer in November 2010 of $25 per share (which would result in an acquisition premium similar to the one it paid to acquire GMP in a negotiated sale in 2007), the Board likely would not be favorable to a shared savings plan. Because of the double-leverage-financing benefits to Gaz Métro identified by the DPS's consultant (which are not unusual and are likely also to have been present in Gaz Métro's purchase of GMP) and the likely strategic and economic benefits of control and a consolidation, the Board would not necessarily be receptive to a shared savings plan even if necessary to top an offer at a price significantly higher than $25 per share.

However, given the circumstances under which the proposed acquisition of CVPS unfolded, which most notably included the agreement by Fortis to pay $35.10 per share to acquire CVPS, we find that the Petitioners' proposed savings sharing plan is not unreasonable, especially given the $144 million guarantee of savings benefits to customers and the risks the Combined Company (and Gaz Métro) will be assuming that projected merger savings are not achieved as forecast in the first eight years after the merger.

The Petitioners calculate that the premium paid to CVPS shareholders alone will be $197 million over the book value of the acquired shares.[43] Other calculations of the applicable acquisition premium may be somewhat lower, but still very significant. In addition, Gaz Métro either has incurred or will incur additional out-of-pocket costs, including: (1) the reimbursement last September of $19.5 million of termination fees CVPS paid to Fortis; (2) transaction costs associated with the acquisition of CVPS of $10 million or more; and (3) $5 million for severance

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42. The Board once stated, in denying approval to the sale of utility assets that included an acquisition premium, that such a sale might be approved if there were significant benefits to customers and more "tangible, competent evidence" of the general good. Docket 4451, *Petition for approval of sales of distribution properties in Vermont by Public Service Company of New Hampshire and New Hampshire Electric Cooperative to GMP*, Order of 8/20/81 at 9-13.

43. Exh. Board-8 at 2.

payments due to CVPS executive officers under pre-existing CVPS change-in-control agreements for such officers. Gaz Métro's total acquisition costs will be about $515 million or more.[44]

Under these circumstances, it appears that the double-leverage-financing benefits to Gaz Métro and the likely strategic and economic benefits to Gaz Métro of control of CVPS and a consolidation of its Vermont electric utility investments might not be sufficient to compensate Gaz Métro for the substantial and immediate out-of-pocket costs it will incur to acquire CVPS without some form of shared savings.[45]

Petitioners have asserted throughout this proceeding that the shared savings plan provides the appropriate inducement for Gaz Métro's investment and the appropriate level of incentive necessary to achieve the projected savings benefits. The Petitioners have offered evidence that their shared savings proposal is consistent with, or more generous to ratepayers than, sharing plans approved in other jurisdictions. However, the Petitioners have provided little justification specific to the circumstances for why their shared savings plan provides the appropriate amount of compensation for the investment Gaz Métro was required to make to deliver savings benefits to customers or the appropriate incentive to achieve those savings benefits.

The shared savings proposal has a direct effect on customer rates (that is, it takes benefits that would otherwise flow to ratepayers — potentially $82.4 million or more — and provides them to the Combined Company). Therefore, the details and reasons for why this particular allocation of shared savings would provide an appropriate return to Gaz Métro for undertaking the Proposed Transaction are as relevant as any material detail that goes into determining an electric utility's cost-of-service.

The Department has provided the Board with useful evidence to assist it in analyzing this issue. The Department estimates that the net present value of the benefits Gaz Métro will receive from double-leverage financing during the first ten years after the merger will be about $112

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44. *See* finding 67, above.

45. While Fortis apparently envisioned enough strategic or economic value from an acquisition of CVPS to justify agreeing to pay $35.10 per share for CVPS (without any form of shared savings or recovery of the acquisition premium in rates), there is no basis for the Board to ascribe to Gaz Métro a similar view of the acquisition in determining that the strategic or economic value of the acquisition to it was sufficient without a sharing of savings.

million (applying an 8 percent discount factor).[46] The net present value of the projected amount of shared savings that the Combined Company will realize from the shared savings plan under the DPS MOU (applying the same discount factor) is estimated by the Department at $61 million.[47] Accordingly, the net present value of the projected shared savings and ten years of double-leverage financing benefits is still less than the premium over the book value of shares that shareholders of CVPS will receive from Gaz Métro and about one-third of the total out-of-pocket acquisition costs of about $515 million or more.

Given the $144 million of guaranteed benefits to customers, including $15.5 million of guaranteed benefits in the first three years after the merger, and the fact that the Combined Company will bear significant risks if it does not achieve the projected level of merger savings over the next eight to ten years, the Board concludes that the terms of the shared savings plan set forth in the DPS MOU are not unreasonable and inappropriate under the circumstances. Although it would not be a sufficient justification alone for shared savings, there is also clear merit to the argument that the shared savings plan provides an additional incentive to obtain savings from the consolidation and further aligns the interests of the Combined Company and its customers. The Combined Company will have strong incentives to achieve the projected savings both to realize its share of the savings and to avoid having to provide guaranteed benefits to customers without having realized sufficient savings from the merger to pay for them. While customers will sacrifice a share of the realized savings for eight years, the risks of not realizing the projected savings, because of the guarantees, rest largely with the Combined Company. The alignment of customer and company interests would appear to be especially strong during Years 4 to 8 when the Combined Company and customers will each receive 50 percent of the savings benefits under the DPS MOU.

Accordingly, the Board concludes in this Order that it is in the public interest to approve the shared and guaranteed savings proposals set forth in the DPS MOU and the IBM MOU in light of the extraordinary circumstances presented in this particular case, including:

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46. Wilson pf. at 19.

47. Exh. Board-12.

- the extremely significant and enduring benefits for customers and the state likely to result from the proposed combination of CVPS and GMP;
- the $144 million of guaranteed rate benefits to customers, including $15.5 million of guaranteed rate benefits in the first three years after the merger, which ensure significant benefits to customers even if expectations of projected permanent savings from the merger are not realized;
- the fact that an acquisition of CVPS by any potential acquirer other than Gaz Métro (which currently owns GMP) would not bring with it the significant and potentially enduring benefits of a merger of these two investor-owned utilities;
- the costs of the acquisition for Gaz Métro, which were largely determined by a competitive process to acquire CVPS and the need to top the offer made by Fortis to CVPS shareholders in order for Gaz Métro to acquire CVPS and deliver the benefits of a CVPS-GMP combination to customers and the state;
- the reasonableness and appropriateness of the specific terms of the shared savings proposal and the savings guarantees to customers under the circumstances;
- the additional inducement and further alignment of interests between the Combined Company and its customers that will result from the sharing of savings benefits during the first eight years after the merger.
- the record Gaz Métro has established through its ownership of Vermont Gas and GMP.

In reaching this conclusion, we emphasize the dramatic and historic savings and guarantee and the unlikely to be repeated circumstances. Thus, no company seeking to acquire a Vermont utility in the future, even for the purposes of consolidation, should do so (or make any offers) with the expectation that the Board will permit the acquiring company to share in the savings benefits resulting from such acquisition or consolidation or otherwise to recover an acquisition premium in rates.

To ensure O&M Cost reductions are permanent and enduring, close regulatory monitoring of the O&M Costs of the Combined Company will likely be required. This will be especially true after the shared savings and guarantee periods end and the incentives for obtaining new savings and maintaining the achieved cost reductions decrease.

b. Effects on Retail Rates

(1) Actual and Potential Effects on Rates

All customers of the Combined Company will receive rate benefits of $15.5 million in aggregate from the savings guarantees in Years 1 through 3. Customers of the Combined Company will also receive a minimum of $144 million of aggregate guaranteed rate benefits following the merger. To the extent actual savings match or exceed projected O&M savings, the Combined Company's retail rates in Year 10 will be at least 5.82 percent lower as a result of savings from the acquisition and merger than such rates would otherwise be. If the projected cost reductions related to the merger are achieved during the first ten years after the merger, one can reasonably expect that such savings will endure and will continue to be reflected in significant rate savings long into the future.

In its testimony, Ampersand proposed that the Board impose a short-term rate freeze and that the Board not approve the merger until the completion of a comprehensive hearing determining the appropriate cost of service for the Combined Company and a revised Alternative Regulation Plan has been devised.[48] We perceive little benefit and significant costs in delaying approval of the merger until after a cost-of-service review for the prospective Combined Company is completed. While a rate freeze has been a feature in some mergers in other jurisdictions,[49] it does not seem appropriate under the circumstances given the $144 million guarantee of rate benefits, including the $15.5 million of rate benefits in the three years after the merger.

(2) Rate Integration Process

It is common for Vermont electric utility mergers to result in consolidated rates after an appropriate transition period.[50] The length of the transition period typically varies depending on

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48. Goulding pf. at 6.

49. Hevert pf. reb. at 18-21.

50. *See*, e.g., Docket 7660, *Joint petition of Vermont Marble Power Division of Omya, Inc. ("VMPD") for consent to sell, and Central Vermont Public Service Corporation to purchase, certain assets of VMPD, and approval of certain other related matters, including revocation of VMPD's Certificate of Public Good*, Order of 6/10/11 at 63-64; Dockets 6850/6853, *Joint Petition of Citizens Communications Company, d/b/a Citizens Energy*

(continued...)

the extent to which the rate levels of the two companies vary. Under the DPS MOU and the IBM MOU, the integration of GMP's and CVPS's rates would begin in 2012 with the amendment of the two current Alt Reg Plans, and would finish with full integration of all tariffs effective after the conclusion of a comprehensive rate design proceeding that would begin with the filing of a proposed new rate design on October 15, 2014 (except that Omya would continue to be served under CVPS's Rate 5 until September 1, 2017). We conclude that such a schedule is appropriate because it will enable the Combined Company to focus initially on consolidating the two companies' operations and systems, before conducting a traditional rate case, comprehensive rate design proceeding, and possibly a comprehensive alternative regulation proceeding (if the Combined Company wishes to extend its then-current alternative regulation plan or propose a new one).

Under the DPS MOU, the first step in the rate integration process will be the amendment of the two current Alt Reg Plans. GMP has already filed proposed changes to its Alt Reg Plan and CVPS's Alt Reg Plan that it asserts are consistent with the DPS MOU. We are considering those in Docket 7864. Also under consideration in the same docket is re-approval of the Virtual Choice Plan, as provided for in the IBM MOU. Our approval in today's Order of the DPS MOU and the IBM MOU includes the conceptual changes to GMP's and CVPS's Alt Reg Plans identified therein. However, we do not rule in this Order on the specific amendments necessary to effectuate the conceptual changes or on any aspect of the Virtual Choice Plan; such rulings will be made in Docket 7864.

As set forth in the DPS MOU, the changes to the GMP Alt Reg Plan and the CVPS Alt Reg Plan are largely those necessary to combine the two plans into one that would apply to the Combined Company. The exception is the one-year extension of the term of the GMP Alt Reg Plan (which will become the Combined Company Alt Reg Plan). We determine that this

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50. (...continued)
Services (Citizens), to sell, and Vermont Electric Cooperative, Inc. (VEC) to purchase, Citizens' Vermont Electric Division distribution assets and a portion of Citizens' transmission assets; and petition of VEC seeking authority for the issuance of financing and related transactions necessary to effectuate the acquisition and *Joint Petition of Citizens Communications Company, d/b/a Citizens Energy Services (Citizens), and Vermont Electric Cooperative, Inc. (VEC) for approval of the transfer and assignment of Hydro-Québec Contracts as it relates to the sale of Citizens to VEC*, Order of 3/1/04 at 16-17.

extension is appropriate because it will allow the Combined Company to focus on consolidating its operations before the Combined Company must inform the Board and the DPS of its intentions regarding a successor alternative regulation plan or plan extension, if any.[51]

At this time, we decline to adopt the additional changes to GMP's Alt Reg Plan that were recommended by Ampersand (lower cost of capital and inclusion of an assumed minimum expected level of ongoing annual operational efficiency improvements calculated after the savings from consolidation of the two companies are taken into account). We reach this decision for two reasons. First, the DPS MOU provides for significantly greater assured savings to be provided to ratepayers over the next two years (the term of the Combined Company's initial Alt Reg Plan) than the Petitioners originally proposed. While the record does not include quantitative evidence comparing the effects of Ampersand's recommendations with the greater assured savings that will be provided to ratepayers under the DPS MOU, qualitatively, the DPS MOU provides greater benefit to ratepayers during the term of the Combined Company's initial Alt Reg Plan, just as Ampersand's recommended changes to GMP's Alt Reg Plan would have done. Second, over the next two years the Combined Company will need to focus on the extensive activities that will be necessary to consolidate its operations. This is a unique opportunity for the Combined Company to reorganize its operations in such a manner as to provide long-term benefits to Vermonters. We do not wish to discourage such a long-term focus by adopting Alt Reg Plan modifications that emphasize short-term productivity. However, we expressly determine that it may be appropriate to consider changes such as those recommended by Ampersand in 2014, if the Combined Company files a request for a successor alternative regulation plan or a plan extension.

As provided in the DPS MOU, the second step in the rate integration process will be the August 1, 2012, base-rate filing. Under the DPS MOU, any party to this proceeding will be allowed to comment on the Base O&M Costs included in this filing; such comments may include a request for a Board investigation of the filing under the Combined Company Alt Reg Plan. However, the DPS MOU does not specify the process that would be followed to accomplish this.

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51. Section I of the current GMP Alt Reg Plan provides that, no later than December 31, 2012, GMP will file with the Board and the DPS its intentions regarding a successor plan or plan extension, if any.

During the technical hearings, the Petitioners stated they would have no objection to a requirement that they provide the 2012 base-rate filing to the parties to this proceeding. The DPS proposed that such filing be provided to the Docket 7770 parties at the same time it is provided to the DPS, and that the Board establish a reasonable deadline for comments from other parties on the filing.[52] Under the current GMP Alt Reg Plan, each base-rate filing is provided to the DPS 60 days before it is filed with the Board, and the DPS files the report from its independent consultant regarding the base-rate filing with the Board on the same date the base-rate filing is filed with the Board. We determine that it is appropriate for GMP to provide copies of its 2012 base-rate filing to the Docket 7770 parties at the same time it is provided to the DPS, and we require GMP to do so. We further determine that any Docket 7770 party that wishes to file comments on the 2012 base-rate filing should do so on or before August 22, 2012. Such a deadline for providing comments will enable the Docket 7770 parties to review the report from the DPS's independent consultant prior to deciding whether to file comments on the base-rate filing.

Pursuant to the DPS MOU, the third step in the rate integration process will be the consolidation of GMP's and CVPS's general residential tariffs, effective September 1, 2013. The rates in the current tariffs are similar; as a result the integration of these tariffs is expected to result in bill impacts of less than two dollars per month. We conclude that, because of the minimal bill impacts, it is appropriate to consolidate these tariffs without waiting for the conclusion of a complete class-cost-of-service study.

Under the DPS MOU, the fourth step in the rate integration process will be a traditional cost-of-service proceeding for rates to be effective October 1, 2014. This traditional cost-of-service review will be based on a test year adjusted for known and measurable changes; however, it will not affect the Base O&M costs included in rates. This review will not include adjustments made under alternative regulation.

We are pleased that the DPS MOU provides for a traditional cost-of-service proceeding. It is appropriate to periodically perform a traditional cost-of-service review to recalibrate a utility's base rates. We have not conducted such a review for either GMP or CVPS since we

52. Tr. 4/4/12 at 156-157 (Miller).

approved their initial alternative regulation plans.[53] Thus, even in the absence of the merger, a traditional cost-of-service review would be timely for both utilities. With the merger and the resulting significant changes to the new utility's cost structure, such a review will be even more important.

Pursuant to the DPS MOU, the final step in the rate integration process will be a comprehensive rate design proceeding, using the results of the traditional cost-of-service review as well as a complete year of smart meter data. This rate design proceeding will include a complete class-cost-of-service study for the Combined Company, which will show the costs each customer class causes the utility to incur to serve it. The use of the smart meter data will provide much greater information about customer load shapes than is available now from many customer classes. We conclude that it is appropriate to base the new rate design for the Combined Company on the results of this comprehensive analysis, rather than on a simple blending of existing rates and tariff structures, because the result will better match the Board's long-standing objective that customers should pay the costs they cause a utility to incur to serve them.

The DPS MOU provides that nothing in that MOU is intended to have any effect on the Board-approved settlement between the DPS and Omya in Docket 7660. Nevertheless, Omya requested that the Board clarify that: (1) Omya would either continue to be served under CVPS's current Rate 5 through September 1, 2017 (with such adjustments to it as may be made in the normal course of business) or would be served under the lowest industrial rate for which its service qualifies, provided that those terms are more favorable than those included in the Docket 7660 settlement; and (2) Omya is entitled to participate in the rate design proceeding that will commence in 2014. The Petitioners have reiterated that Omya will continue to be served under CVPS's current Rate 5 through September 1, 2017.[54] In addition, Petitioners have agreed that any affected customer, including Omya, should have the opportunity to participate fully in the rate design proceeding.[55]

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53. We approved GMP's initial alternative regulation plan in our 12/22/06 Order in Dockets 7175/7176. We approved CVPS's initial alternative regulation plan in our 9/30/08 Order in Docket 7336.

54. Petitioners Reply Brief at 16.

55. Petitioners Reply Brief at 16; Griffin pf. reb. at 9.

Our approval today of the DPS MOU will not affect the Board-approved settlement between the DPS and Omya in Docket 7660, and we reiterate that the Combined Company is subject to and bound by the terms of the Docket 7660 settlement agreement, including that Omya will continue to be served under CVPS's current Rate 5 through September 1, 2017 (with such adjustments to Rate 5 as may be made in the normal course of business). We do not, however, determine today that Omya is entitled to participate in the rate design proceeding that will commence in 2014. The Petitioners have agreed that Omya (and AIV, IBM and any other affected customer) should be allowed to intervene in the rate design proceeding. However, we will rule on all motions to intervene in the rate design proceeding when they are filed in that case.

c. Effects on Retail Service Quality

(1) Expected Effects on Retail Service Quality

Integration of GMP and CVPS will be a complex and lengthy undertaking. The Petitioners' goal is to maintain the service quality levels historically provided by CVPS and GMP during the transition. However, during the transition of key operational systems, there will be an increased possibility of temporary service issues related to call center requests, billing or other transactions related to customers' service. The Combined Company will undertake testing and parallel processing prior to significant transitions to minimize the possibility of impacts to customers. Nevertheless, it is possible that customers of the Combined Company will experience some service issues.

The Combined Company intends to communicate with customers and stakeholders in advance of key system transition events to increase awareness of the activities and how service might be affected. Throughout the integration process, the Combined Company will also be reporting service quality metrics to the DPS on a quarterly basis and meeting in person more frequently than normal to keep the DPS staff informed regarding integration activities and operating performance.

Over the long-term, once the service integration process is complete, retail service quality should improve over time for several reasons. First, the Combined Company will be using the best practices of both GMP and CVPS. Second, the baseline included in the Combined

Company's Service Quality Plan for customer outage duration will be at least 10 percent better than would have resulted from simply blending the baselines in CVPS's and GMP's current service quality plans. Third, the expected consolidation of service centers with larger numbers of crews can lead to shorter response times.[56]

(2) Integration of Service Quality Plans

Both GMP and CVPS currently have Board-approved Service Quality Plans. These Service Quality Plans set out standards for measurement of the utilities' performance in seven broad areas of customer service: call answering, billing, meter reading, work completion, customer satisfaction, worker safety, and reliability. Both utilities' current Service Quality Plans include service guarantees which require the companies to provide specified bill credits to individual customers if the utilities fail to meet certain service commitments to those customers. The existing Service Quality Plans also include service quality compensation mechanisms, which require the utilities to provide additional compensation to customers if certain performance standards are not met.[57]

While the basic structure of GMP's and CVPS's current Service Quality Plans is similar, the Service Quality Plans are not identical. The Petitioners propose that their current Service Quality Plans would be integrated, and the DPS MOU provides that the baseline for the customer outage duration standard will be improved. However, no party has proposed a date for integrating the plans. The Petitioners asserted they expect this would occur within the next year or two.[58] The DPS stated that it would like the Service Quality Plans to be integrated as expeditiously as possible, and it is amenable to any reasonable deadline for this integration.[59] No other party commented on a proposed date for integrating the two Service Quality Plans.

It is easiest for changes in service quality performance standards to be implemented at the beginning of a service-quality-plan year because both current Service Quality Plans provide that the utilities must pay service quality compensation to customers if they fail to meet certain

56. *See*, finding 43, above.
57. *See*, Docket 6851, Order of 6/18/03, at 3-4; Docket 6865, Order of 10/1/03 at 2-3.
58. Tr. 4/3/12 at 138-139 (Griffin).
59. Tr. 4/4/12 at 158 (Miller).

performance standards over an entire service-quality-plan year. Since both utilities' Service Quality Plans operate on a calendar-year basis, it would be appropriate for an integrated Service Quality Plan to take effect for the Combined Company at the beginning of a calendar year.

We recognize the value of integrating Service Quality Plans as quickly as possible, particularly since the DPS MOU provides for improvement in the baseline for the customer outage duration standard. However, we do not believe it is reasonable to accomplish such integration by January 1, 2013. The merger is not scheduled to take effect until September 30, 2012. Given the magnitude of the operational integration effort that will occur immediately after that date, we conclude that the Combined Company should focus its attention on integrating its operations, rather than its legacy Service Quality Plans. Therefore, we require the Combined Company to file a proposed integrated Service Quality Plan, consistent with the terms of the DPS MOU, by July 1, 2013. This will provide us with sufficient time to review the filing and have an integrated Service Quality Plan take effect on January 1, 2014.

d. Other Effects on Retail Customers

In addition to the effects discussed above, the acquisition and merger will have several additional effects. Customers of the existing companies will likely benefit from these additional effects, which are largely supportive of the proposed transactions. However, the potential economic benefits from these effects generally cannot be quantified.

Existing CVPS customers will benefit, as GMP customers have since 2007, from having a financially strong equity owner and a source of liquidity for financing the equity portion of investments and in maintaining a strong financial position and strong financial ratios.[60] The Combined Company's association with Gaz Métro could also enhance its ability to negotiate better terms in contracts to purchase power than CVPS could otherwise obtain. Utilities with stronger credit and more certain access to capital and funding are generally able to negotiate more favorable terms related to collateral or other credit support as security for non-

60. Bugbee pf. at 5-6; Despars pf. at 6.

performance.[61] It is also possible that the increased size and power-supply needs could increase the bargaining power of the Combined Company relative to that which either GMP or CVPS currently possesses.[62]

It is also expected that the Combined Company will also be better able to secure mutual aid during storms, because the two companies will no longer be competing for the same limited resources.[63]

e. Effects on Employees

Because the merger will lead to consolidated operations, the Combined Company will need fewer employees than are currently employed by CVPS and GMP. Currently, the Petitioners expect that five years after the merger, the Combined Company will have 117 fewer employees than CVPS and GMP combined have today. By ten years after the merger, the Petitioners expect that the Combined Company will have eliminated an additional 22 positions.

These reductions in the number of utility employees reflect the economies and efficiencies resulting from the merger and will produce significant cost savings that ultimately will benefit ratepayers. However, there are human costs associated with fewer utility jobs, particularly at a time when opportunities for alternative employment are still less than in normal times, as well as economic costs to the state associated with fewer utility jobs.

To address these concerns, the Petitioners proposed, and the DPS MOU provides, that the Combined Company's workforce will be reduced gradually, solely through natural retirements and turnover, without any layoffs (except for executive officers) or mandatory relocations. This commitment provides an appropriate balance between the labor cost savings that will ultimately benefit ratepayers and the human concerns associated with the elimination of utility jobs, and we will require it as a condition of our approval of the merger. We commend the Petitioners for this thoughtful and measured approach to employee reductions.

61. Despars pf. at 6.
62. Bugbee pf. at 6.
63. Bugbee pf. at 6.

In addition, current GMP and CVPS employees will benefit from the merger. As employees of the Combined Company, they will have more opportunities to advance and branch out into new areas of interest. Furthermore, because there will be more crews in more contiguous territories, it is likely that employees will spend less time driving to job locations outside their districts. Finally, based upon the acquiring company's history to date, the Combined Company is likely to provide a good work environment.

f. Effects on City of Rutland

CVPS has been a major employer in the Rutland area for many decades. Both the company and its employees have played a significant leadership role in the community. In contrast, GMP's headquarters have long been located in Chittenden County. As a result, depending on how the operations of the two companies are combined, the merger has the potential to significantly negatively affect the Rutland area. In particular, Rutland is concerned about possible job losses and abandonment of CVPS's current facilities.

The Petitioners engaged in discussions with Rutland to address its concerns. These discussions culminated in the Rutland MOU, which includes numerous commitments by the Petitioners to the Rutland region. These commitments include:

- maintaining a proportional level of the Combined Company's employees in the Rutland region;
- locating the Combined Company's Headquarters for Operations and its Energy Innovation Center in Rutland City or Rutland Town;
- locating a facility in downtown Rutland (based on a collaborative, stakeholder-based engagement process with Rutland community leadership);
- collaborating with local leaders to develop a plan to repurpose existing CVPS facilities;
- establishing a solar city program in Rutland County resulting in the Rutland area becoming the leading solar generation center in Vermont;
- creating a $100,000 "Open for Business" fund to be administered by the Downtown Rutland Partnership;
- creating a $100,000 "Green Growth" fund to be administered by the Rutland Economic Development Corporation; and

- continuing CVPS's historic level of leadership and participation in the community.

The DPS MOU provides that the DPS does not object to the Rutland MOU. No other party commented on the Rutland MOU.

We conclude that the Petitioners' commitments to the Rutland area, as embodied in the Rutland MOU, are a reasonable means of addressing Rutland's concerns regarding the possible effects of the merger on the community. Accordingly, we approve the Rutland MOU and condition our approval of the merger on the Petitioners' fulfillment of the Rutland MOU's terms.

We also acknowledge that the DPS MOU explicitly provides that approval of the Rutland MOU will not require the DPS to take or refrain from taking any position regarding rate recovery for investments or expenditure made pursuant to that MOU. We will consider rate recovery for investments or expenditures resulting from the Rutland MOU at the time such recovery is proposed in a rate proceeding for the Combined Company.

g. Effects on Other Vermont Electric Distribution Utilities

Because this transaction will reshape the electric utility industry in Vermont, it is necessary to consider the effects this transaction will have on other distribution utilities in this state. Other Vermont distribution utilities have identified five areas in which they will be affected: (1) the Irasburg-East Fairfax Transmission Facilities; (2) the Highgate Joint Owners Agreement; (3) the CVPS-Hyde Park 3-Phase Service Agreement; (4) other VPPSA Agreements; (5) WEC Sub-Transmission Rates; and (6) VELCO ownership and governance. We discuss the first five of these areas in this section; we address VELCO ownership and governance in section VII.C.2, below.

(1) Irasburg-East Fairfax Transmission Facilities

VEC has concerns about the reliability of the Irasburg-East Fairfax Transmission Facilities, which are currently owned by CVPS and which serve directly or indirectly eight VEC substations and/or metering points, none of which has an alternative means of being served in the event of a CVPS transmission line outage. VEC has discussed its reliability concerns with GMP. These discussions led to the VEC MOU under which VEC and GMP agreed to commence negotiations immediately with the goal of agreeing to a mutually acceptable model for the ownership and operation of the Irasburg-East Fairfax Transmission Facilities by July 15, 2012. The VEC MOU provides that GMP and VEC will consider all viable models for ownership and operation, prioritizing those models that best serve the interests of all customers served by the Irasburg-East Fairfax Transmission Facilities, including customers of Hyde Park and Johnson, from the perspective of reliability, serviceability and cost.

We have long encouraged Vermont distribution utilities to work collaboratively to address any reliability issues associated with the provision of sub-transmission service. The VEC MOU is an example of such collaboration and will promote the public good by providing an avenue for resolving reliability concerns that have persisted for many years, while allowing for recourse to Vermont regulators if a satisfactory agreement cannot be reached. Therefore, we approve the VEC MOU.

(2) Highgate Agreement

Under the Highgate Agreement, decisions concerning the Highgate Interconnection are made by a management committee consisting of one representative appointed by each owner of the facility, with each owner having a percentage of votes equivalent to its ownership share in the project. The Highgate Agreement requires that decisions of the management committee be made by at least two owners representing a majority of ownership shares in the project.

BED and VPPSA recommend that, to ensure the interests of non-transmission owning utilities are considered when decisions are made concerning the Highgate Interconnection, the Highgate Agreement should be modified to require decisions of the management committee to be made by at least three owners representing a majority of ownership shares in the project. The Petitioners have agreed to work with the other Highgate Joint Owners to amend the Highgate Agreement as BED and VPPSA have recommended. Thus, the Petitioners have agreed to take steps to address other Vermont electric distribution utilities' concerns in this area. As a condition of our approval of the Proposed Transaction, we require the Petitioners to work with the other joint owners of the the Highgate Transmission Facility to amend the Highgate Agreement to provide that any action requires the affirmative vote of at least three owners representing a majority of the ownership shares in the Highgate transmission interconnection project.

(3) CVPS-Hyde Park 3-Phase Service Agreement

When the Board established electric utility service territories in the 1970s, CVPS and Hyde Park entered into a 3-Phase Service Agreement under which CVPS serves a few customers in Hyde Park's service territory. GMP and VPPSA have agreed to negotiate in good faith to request Board approval to terminate the CVPS-Hyde Park 3-Phase Service Agreement.

This is another example of GMP working collaboratively with other Vermont distribution utilities to address areas of concern. As a condition of our approval of the Proposed Transaction, we require GMP to negotiate in good faith with VPPSA to address issues related to the termination of the CVPS-Hyde Park 3-Phase Service Agreement and to request Board approval to terminate such agreement upon the merger of CVPS and GMP.

(4) Other VPPSA Agreements

VPPSA members have a variety of agreements, understandings and procedures with GMP and CVPS. These include, among others, development and updating of distribution standards, emergency back-up agreements and, in the case of Northfield, a comprehensive distribution system maintenance agreement with GMP.

VPPSA expressed concern that this transaction could affect those agreements. To address this concern, the Petitioners have agreed that VPPSA members' currently existing agreements, understandings, and procedures with GMP and CVPS will remain in place, and that none will be changed or terminated without notice and an opportunity to negotiate in good faith. As a condition of our approval of the Proposed Transaction, we require that the agreements, understandings and procedures existing between members of VPPSA and CVPS or GMP will remain in effect upon the merger of CVPS and GMP, and none of these agreements, understandings and procedures will be changed or terminated without notice and an opportunity to negotiate in good faith.

(5) WEC Sub-Transmission Rates

Seven out of eight WEC substations are served by sub-transmission lines owned by GMP. WEC estimates that the planned merger of GMP's and CVPS's sub-transmission tariffs will increase WEC's sub-transmission rates by approximately 70 percent or $128,000 per year.

WEC acknowledges that FERC has "primary jurisdiction" over sub-transmission tariffs.[64] However, WEC argues that the Board retains jurisdiction over mergers of companies within its jurisdiction. In addition, WEC contends that the Board is essentially performing a prudential review when determining whether to approve the proposed merger, and that FERC has recognized that a state regulatory commission's prudence review is not preempted by FERC ratemaking. WEC asserts that it should be provided the same type of rate mitigation accorded to other non-residential customers of GMP and CVPS. Therefore, WEC contends that the Board should condition approval of the merger of GMP and CVPS upon the provision of rate mitigation to WEC, to the extent available under FERC policies and precedent.

The Petitioners assert that WEC's request for rate mitigation will be addressed by FERC, which has exclusive jurisdiction over sub-transmission rates. The Petitioners note that WEC will be able to participate in the FERC proceeding that will establish the new rates. In addition, the Petitioners state that it would be appropriate to increase GMP's sub-transmission rates in the absence of the merger to allow GMP to recover its recent investments in its transmission system.

We are sympathetic to the concerns raised by WEC regarding the potential increase in the sub-transmission rates resulting from the merger of GMP's and CVPS's sub-transmission tariffs. Nonetheless, we decline to adopt the condition recommended by WEC. As the Petitioners have pointed out, it is well-settled that states do not have authority over wholesale sub-transmission rates.[65] Any proposed single sub-transmission rate for the Combined Company must be filed at FERC, which is the forum where WEC will have the opportunity to challenge any proposed rate

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64. WEC Brief at 9.

65. Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. 1131,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

increase at that time.[66] It is encouraging that the Petitioners have expressed a desire to work with WEC in the context of the FERC sub-transmission rate-setting proceeding to develop a plan supported by both GMP and WEC for managing any transmission rate increases that result from blending CVPS's and GMP's transmission rates.[67] It may well be that appropriate rate mitigation can be achieved through such collaborative efforts. We urge the Petitioners to follow through on the development of such a sub-transmission rate mitigation plan.

h. Effects on Competition

In its determinations of public good related to acquisitions of controlling interests, the Board routinely considers the effect of the acquisition on competition. In addition, 30 V.S.A. § 311 requires a specific finding by the Board that a "consolidation or merger will not result in obstructing or preventing competition in the purchase or sale of any product, service or commodity, in the sale, purchase or manufacture of which such corporations are engaged." In this Order, we conclude based on the record of evidence that the Proposed Transaction will not impair competition.

Due to the many public comments we have received on this issue, it is important to emphasize that the acquisition and merger will not have any effect on competition at the retail customer level as CVPS and GMP do not currently compete with each other for retail customers. CVPS and GMP currently have the exclusive rights to distribute and sell electric energy to retail customers in their respective territories, and the Combined Company will have no more than the same rights in the consolidated service territory. It is largely because of these exclusive rights to provide retail electric service in a particular geographic area that electric utilities are subject to comprehensive regulation.

Within the regional New England wholesale electric market in which both CVPS and GMP purchase and sell power, both Vermont utilities have relatively small market shares and the merger is not expected to have any measurable effect on competition in that market. In

66. Exh. WEC-Cross-14 at 20.

67. Otley pf. reb. at 7-8.

reviewing and approving the acquisition and merger transactions, FERC has concluded the competitive effect of the merger on this market will be *de minimis*.[68]

Ampersand is concerned about an increase in monopsony power in the purchase of renewable and other energy in Vermont following the merger of CVPS and GMP.[69] Although there was insufficient evidence presented to support these concerns and about the relevant geographic market, this issue may deserve some future consideration and monitoring following the merger to ensure that the development of and competition for small generation resources in the state is not impaired by the merger. The proposal by Ampersand that the Combined Company be required to procure all future generation through a competitive process, however, would not appear to be in the interest of ratepayers. The least cost alternative for the Combined Company in meeting its power supply needs and objectives may result from its construction of additional in-state generation or negotiated bilateral power supply agreements.

One of the Department's witnesses noted in his testimony the potential effect of the merger on intermodal gas/electric competition given the common ownership of the Combined Company and Vermont Gas.[70] In response to this potential issue, the Board invited comments from the parties, which include industrial customers, groups representing various classes of customers and other electric distribution companies in Vermont. None of the parties expressed any material concern about past or future competition issues related to the common ownership of gas and electric companies. We agree with the recommendation of the Department's witness that no further action is required at this time with respect to this issue, but that Vermont regulators should be sensitive and attentive to intermodal gas/electric competition in the service territories of Vermont Gas and the Combined Company and flexible in dealing with issues as they arise.[71]

68. Exh. WEC-Cross-14 at 13.
69. Goulding pf. at 4-6.
70. Wilson pf. at 41.
71. Tr. 3/27/12 at 83-84 (Wilson).

4. Consistency with Vermont Energy Plan and Comprehensive Energy Plan

The Department has concluded, and the Board accepts the conclusion, that the acquisition, merger and related transactions are consistent with the 2005 Vermont Energy Plan and the 2011 Comprehensive Energy Plan.[72]

C. Other Merger Conditions

1. Windfall Recovery and CEED Fund Proposal

a. Establishment of Windfall-Recovery Provisions

The Board established the windfall-recovery provisions in a 2001 Order in Dockets 6460/6120. These two dockets were investigations of rate increases proposed by CVPS.[73] The central issue in these cases was the ratemaking treatment of the Company's purchases of power from Hydro-Québec pursuant to the contract between Hydro-Québec and the Vermont Joint Owners (the "HQ-VJO Contract"). Uncertainty concerning CVPS's ability to recover all of its costs associated with this Contract had clouded CVPS's financial stability since 1994, when the Board first imposed a return-on-equity penalty on CVPS due to failures and errors in its overall power supply management (including the HQ-VJO Contract).

In a settlement of Dockets 6120 and 6460, CVPS and the Department agreed that the Board should not subject CVPS to any further penalty or disallowance of costs incurred in the purchase of power pursuant to the HQ/VJO Contract based on CVPS's prudence relating to any act or omission occurring prior to the effective date of the order approving that memorandum of understanding, or based on the application of any "used or useful" theory. The Board accepted these parties' recommendations and affirmatively stated that it would require no further disallowances based on either of these items.[74] The Board concluded that this decision was necessary "for the good of ratepayers,"[75] even though it involved approving rates in excess of those that would occur if the Board applied a traditional cost-of-service methodology, largely

72. Hopkins pf. at 7; tr. 3/29/12 at 102 (Hopkins).

73. Docket 6120 was an investigation of a 1998 request by CVPS for a 12.9 percent increase in its rates. Docket 6460 was an investigation of a 2000 request by CVPS for a 7.6 percent increase in its rates.

74. Dockets 6460/6120, Order of 6/26/01 at 69 (order paragraphs 10 and 11).

75. Dockets 6460/6120, Order of 6/26/01 at 5.

because of its concern about CVPS's long-term financial viability and access to capital. Such access to capital markets is necessary for CVPS to meet new demand for service and to upgrade or replace existing facilities so that customers will receive reliable service.[76] The Board also recognized that fairness to ratepayers compelled it to balance the special ratemaking treatment that it employed with a mechanism to return to ratepayers a portion of any financial windfall shareholders may receive from a later sale or acquisition. As the Board explained:

> . . . the rate increase we approve today commits CVPS's ratepayers to pay large costs now and in the future for power purchased under the HQ-VJO Contract. These are costs that would not be recoverable under traditional ratemaking methodologies. It is necessary and appropriate to balance these higher rates imposed on ratepayers with a mechanism designed to protect ratepayers against a risk of unfairness if our decision leads to unjust enrichment or windfall profits. This mechanism, which will be triggered only in the event of an acquisition or disposal of some or all of CVPS's assets, or merger, at a price in excess of book value, will protect ratepayers from the unjust enrichment of CVPS's shareholders and ensure a fair allocation of the benefits of today's Order. Today's Order provides that stockholders and ratepayers will share equally in any such premium, up to a maximum amount (for ratepayers) of $16 million.[77]

The Board emphasized that "Any such procedure [for windfall sharing] must ensure that the benefit provided to ratepayers is in addition to (rather than a replacement for) other benefits appropriately assigned to ratepayers at the time of the future sale, merger or acquisition."[78] The Board further clarified that:

> when an event that triggers the windfall sharing mechanism occurs, the first step is to determine what benefits ratepayers are otherwise entitled to as the result of the sale or merger. Once this determination has been made, the windfall sharing mechanism will apply to any remaining proceeds above book-value.[79]

In the Board's Order in Dockets 6460/6120, the Board repeatedly noted the similarities between the windfall-recovery provisions therein, and the windfall-recovery provisions in its Order in Docket 6107, in which the Board established rates for GMP that included full recovery

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76. Dockets 6460/6120, Order of 6/26/01 at 5, 35-36.

77. Dockets 6460/6120, Order of 6/26/01 at 6. The Board also required that the $16 million cap be adjusted for inflation. Dockets 6460/6120, Order of 6/26/01 at 73 (order paragraph 28).

78. Dockets 6460/6120, Order of 6/26/01 at 65, quoting Docket 6107, Order of 1/23/01 at 116.

79. Dockets 6460/6120, Order of 6/26/01 at 65-66, quoting Docket 6107, Order of 2/20/01 at 3 (footnote omitted).

of the costs of GMP's power purchases under the HQ-VJO Contract, despite GMP's imprudent decision to lock-in early to that contract.[80] The Board's decisions in Docket 6107 (regarding GMP) and Dockets 6460/6120 (regarding CVPS) are the only two instances in which the Board has approved windfall recovery.

b. Treatment of Windfall Recovery in Prior GMP Case

In 2007, Gaz Métro's acquisition of GMP triggered the Docket 6107 windfall-recovery provisions. In Docket 7213, the proceeding in which the Board approved the acquisition, GMP proposed that the windfall recovery be provided through the GMP Efficiency Fund. Under this proposal, GMP would invest most of the funds that it must return in projects designed to produce an equivalent amount of customer benefits, including new and existing efficiency projects, demand-response programs, renewable and clean energy programs and technologies, and new and emerging technologies.[81] In addition, GMP proposed that its investments in projects through the GMP Efficiency Fund would be recovered in rates.[82]

In Docket 7213, IBM recommended that, in lieu of the GMP Efficiency Fund, the Board direct GMP to refund the money directly to customers. Also in that proceeding, AARP initially asserted that GMP should not be allowed to recover the GMP Efficiency Fund investments in rates.[83] However, AARP reached a settlement with GMP in which AARP agreed to withdraw its witnesses' testimony and support the recovery in rates of the costs of a pilot program for low-income electricity rates, to be funded through the GMP Efficiency Fund.[84]

In Docket 7213, the Board determined that, subject to certain conditions, the GMP Efficiency Fund was an appropriate mechanism to provide the Docket 6107 windfall recovery. These conditions were: (1) the investments must not have otherwise occurred as a result of GMP's normal operations and regulatory commitments or as a result of the Energy Efficiency Utility's efforts (referred to as the "but for" test); and (2) GMP must increase any remaining

80. Dockets 6460/6120, Order of 6/26/01 at 56-65.
81. Docket 7213, Order of 3/26/07 at 4.
82. Docket 7213, Order of 3/26/07 at 20 (finding 71).
83. Docket 7213, Order of 11/17/06 at 4.
84. Exh. Pet.-Cross-10 at 2-3.

amount of the required benefit to be provided by the GMP Efficiency Fund by GMP's cost of capital.[85] In Docket 7213, the Board concluded that the windfall recovery would be provided not by the investments themselves but through the substantial net energy savings benefits provided to customers from the rate-recoverable investments.[86] The Board stated that these customer benefits "would be equal to or greater than they would receive through a refund, thus meeting the requirement set out in Docket 6107."[87]

The Board also noted in that docket that it had some concerns about using GMP Efficiency Fund monies to invest in energy efficiency measures directed at non-electrical uses because the system benefits of reduced electrical usage that flow to all customers would not occur. Therefore, the Board's Order stated that if GMP sought to implement such measures, "it will have a heavy burden of persuasion."[88]

Subsequently, in Docket 7412, the Board authorized GMP to use GMP Efficiency Fund monies to invest in programs that produce benefits largely from non-electric savings. In reaching this decision, the Board recognized that alternative residential energy efficiency programs were adequately funded by Efficiency Vermont so funding of such programs by the GMP Efficiency Fund would not meet the "but for" test required in Docket 7213. The Board determined that GMP's proposed approach was reasonable at that time because the programs would still achieve some electric savings, and the Board's approval was only for one year, thereby giving the Board the opportunity to review the efficacy of GMP's actions and evaluate whether adjustments were needed to address its concerns prior to approving any future annual plans.[89] The Board has since authorized the investment of GMP Efficiency Fund monies in programs that produced benefits largely from non-electric savings in each subsequent year.[90]

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85. Docket 7213, Order of 3/26/07 at 4-5, 38-39.

86. "The effect of the inclusion of the investments in rate base is that the actual return of the financial windfall from the acquisition occurs not through the incremental investments themselves, but instead through the net benefits of each investment." Docket 7213, Order of 3/26/07 at 38.

87. Docket 7213, Order of 3/26/07 at 37.

88. Docket 7213, Order of 3/26/07 at 39.

89. Docket 7412, Order of 3/14/08 at 3-4.

90. Docket 7492, Order of 3/27/09 at 3 (findings 5 and 6); Docket 7574, Order of 1/4/10 at 3-4 (findings 5 and 6); Docket 7687, Order of 1/20/11 at 3-4 (finding 5); Docket 7850, Order of 3/29/12 at 3 (finding 4).

c. Proposal in DPS MOU

The price of the proposed acquisition of CVPS is significantly in excess of CVPS's book value, resulting in an acquisition premium of approximately $200 million.[91] Thus, pursuant to the Board's Dockets 6460/6120 Order, CVPS must share this above-market premium, up to the maximum of $16 million (which is adjusted for inflation to approximately $20.9 million as of December 31, 2011).[92] The Petitioners propose two alternatives for providing the necessary benefits to ratepayers.

First, the Petitioners contend that the acquisition of CVPS and the subsequent merger of the two companies three months later should be seen as two separate, independent transactions when interpreting the windfall-recovery provisions of Dockets 6460/6120 (and, in particular, the requirement that the benefits that provide the windfall recovery be in addition to the benefits ratepayers would otherwise receive from a future sale). In the Petitioners' view, the acquisition of CVPS is the triggering event for the windfall recovery, and the merger is the mechanism through which restitution by way of the guarantee of merger savings is provided to CVPS ratepayers. Under this view, the $144 million guarantee is more than sufficient to return the $20.9 million windfall recovery to ratepayers. AARP and the DPS oppose this position, asserting instead that the windfall monies to be provided to ratepayers should be in addition to the benefits from the merger.

The Petitioners' second proposed alternative for providing the necessary benefits to ratepayers is the CEED Fund. After negotiations, the DPS and the Petitioners agreed in the DPS MOU that a modified version of the Petitioners' CEED proposal is an appropriate windfall-recovery mechanism.[93]

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91. *See*, finding 97, above.

92. For purposes of the CEED Fund, the correct figure is $16 million adjusted for inflation for the entire period between the Board's Dockets 6460/6120 Order and the date the money is invested in the CEED Fund.

93. Exh. Pet.-DPS-1 at ¶ 18. There may be merit to the Petitioners' first argument that the acquisition of CVPS (which could be accomplished by Gaz Métro, Fortis or any other successful bidder for CVPS) and the subsequent merger (which could only be accomplished through the acquisition of CVPS by Gaz Métro) should be seen as two independent transactions for purposes of interpreting the windfall-recovery provisions of Dockets 6460/6120. However, there is no need for the Board to examine this argument any further because our decision today is based on the DPS MOU and the merits of the Petitioners' second argument regarding the CEED Fund.

Under the DPS MOU, GMP and the Combined Company would voluntarily invest the \$20.9 million required by the Dockets 6460/6120 Order in energy efficiency and other programs, including (among others) distributed generation and renewable generation. The DPS MOU would allow GMP to earn both a return of and a return on this investment. In addition, the DPS MOU requires GMP and the Combined Company to invest in a manner that achieves net benefits equal to 1.2 times the windfall-recovery amount. Under the DPS MOU, investment would be made in rough proportion to CVPS customer classes, with the intention of achieving net benefits in rough proportion as well. The DPS MOU provides that all investments would be completed within seven years of the date of this Order, with any remaining funds returned to ratepayers.

The DPS MOU identifies some of the projects in which CEED Fund monies will be invested:

- GMP and the Combined Company will invest at least \$10 million in Vermont's Weatherization Program before December 1, 2013.
- At least an additional \$2 million will be invested in thermal efficiency improvements for customers who do not qualify for Vermont's Weatherization Program.

Under the DPS MOU, GMP or the Combined Company would convene an annual stakeholder process to solicit input on: (1) how the \$2 million in additional thermal efficiency improvements should be invested; and (2) appropriate projects for the remaining CEED Fund monies. The Combined Company would then submit to the Board for review and approval its planned investments for the following year.

Petitioners expect that the Combined Company would achieve roughly twice as much societal value as it would spend to fund additional efficiency retrofit investment by Efficiency Vermont in CVPS's territory.[94] They contend that innovative financing approaches may enable the Combined Company to substantially raise the dollar value of net societal benefits yielded per dollar of Combined Company funding.[95] The DPS MOU provides that investments in the Weatherization program will be deemed to have a customer benefit of 1.2 times the amount of the investment.

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94. Plunkett pf. reb. at 11.
95. Plunkett pf. reb. at 4.

The Petitioners assert that the CEED Fund is modeled after, and substantially similar to, the GMP Efficiency Fund that the Board determined in Docket 7213 satisfied the Docket 6107 windfall-recovery provisions. Specifically, according to the Petitioners, both the GMP Efficiency Fund and the CEED Fund include: (1) a "but for" test for selecting projects; (2) a minimum investment requirement; (3) rate recovery of investments; (4) measurement and reporting requirements; (5) a seven-year deadline for achieving the required level of benefits; (6) Board approval of the methodology for calculating net benefits; and (7) a similar plan to address the consequences of failing to achieve the required investment or level of benefits.

The DPS supports the CEED Fund as set forth in the DPS MOU. AIV agrees that GMP's general proposal to invest $20.9 million in programs that will generate customer benefits, including rate recovery of these investments, is an appropriate means of furnishing value to CVPS customers to meet the terms of the windfall-recovery provisions.[96]

AARP opposes the CEED Fund as set forth in the DPS MOU, which it maintains is inconsistent with the Board's mandate in Dockets 6460/6120. AARP argues that the Board should enforce the Dockets 6460/6120 Order by requiring that the windfall-recovery amounts come from shareholders and be paid to ratepayers in a one-time refund. It asserts that the CEED Fund proposal does not actually share any of the windfall profits because the Combined Company will still earn a return of and on the investment. According to AARP, this feature means that any benefit received by former CVPS ratepayers is actually paid for by the Combined Company's ratepayers, so that no value is actually returned. Furthermore, AARP argues that there are significant differences between the CEED Fund proposal and the GMP Efficiency Fund that the Board approved in Docket 7213 including, among others, that approximately half of the funds will be spent on thermal efficiency programs which will provide no electric system benefits and most of which would not be subject to stakeholder and Board review.

96. AIV MOU at ¶ 7.

d. Adequacy of CEED Fund in Meeting Dockets 6460/6120 Provisions

The Board's Dockets 6460/6120 Order included provisions regarding a windfall-recovery mechanism. At that time, the Board defined the triggering mechanism (the above-book value sale or merger), the magnitude of the sharing (half of the above-book value premium, capped at $16 million and adjusted for inflation), and the beneficiaries (CVPS's ratepayers during the period in which funds are returned).[97] The Board did not, however, delineate how CVPS must return the windfall-recovery amounts. Instead, the Board stated:

> we leave it to the discretion of CVPS whether the specific design of the procedure will be determined at the time of the first triggering event, or instead in a new investigation to be opened promptly, if the Company so petitions.[98]

As part of the merger transaction, and as later embodied in the DPS MOU, Petitioners have proposed to return the windfall-recovery amounts to former CVPS ratepayers through the CEED Fund. Parties have presented considerable evidence and argument regarding whether this is an acceptable means of fulfilling the Dockets 6460/6120 provisions. In addition, we have received large numbers of public comments on this issue. Furthermore, we are aware that this issue has been the subject of contentious debates in various public forums. As a result, we are compelled to clarify that the basis of our decision today is the same as the basis for all our decisions: the evidence in the record in the particular proceeding, regulatory precedent, and Vermont law.[99] We value public comments highly as they help inform us of public concerns that we can then pursue with the parties during evidentiary hearings; however, the public comments themselves are not part of the evidentiary record. In this proceeding, we asked extensive questions of the parties during the technical hearings regarding the adequacy of the proposed

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97. Dockets 6460/6120, Order of 6/26/01 at 59-66.

98. Dockets 6460/6120, Order of 6/26/01 at 65.

99. As the Board stated in an Order in another contentious case that generated significant public debate nearly 14 years ago:

> As a starting point, it is our duty to make it clear to all parties and to the public that our decisions regarding utility rates will not be directed by political pressure or public relations campaigns. This proceeding has involved the parties and the Board in the examination of a complex factual record. . . . Our decisions in this proceeding have been, and will be, decided upon the basis of the evidence in that record, regulatory precedent, and the law of Vermont. We will not decide this matter, or any rate case, on debates outside of the hearing room, or on assertions of the parties not grounded in the law or the evidence in the record.

Docket 5983, Order of 6/8/98 at 3.

CEED Fund in satisfying the Dockets 6460/6120 provisions. It is this evidence, not the public comments themselves, that forms the basis for our decision today.

After reviewing all the evidence and Board precedent, we conclude that the CEED Fund as proposed in the DPS MOU represents an acceptable mechanism for providing the windfall-recovery amounts set forth in Dockets 6460/6120, notwithstanding that the CEED Fund investments are recoverable in rates — a fact that some may argue is not ideal. We reach this decision for two primary reasons. First, as articulated earlier in this Order, the merger of CVPS and GMP has tremendous benefits for ratepayers of both companies. These benefits cannot be achieved if any other entity were to purchase CVPS. The Petitioners have filed a comprehensive acquisition and merger proposal with us; a change to this aspect of the proposal such that the cost to Gaz Métro of acquiring CVPS were to materially increase could induce Gaz Métro to withdraw its offer and then Vermonters would lose all the benefits from the Proposed Transaction. Second, as explained more fully below, the CEED Fund is substantially similar to the GMP Efficiency Fund, which we previously determined was an acceptable mechanism for providing the windfall-recovery amounts set forth in Docket 6107. Thus, the proposal before us in the DPS MOU is consistent with Board precedent.[100]

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100. There are additional Board precedents for using funds that would otherwise be used to reduce rates or to provide a one-time bill-credit to customers for public purposes that would provide a greater value to ratepayers. For example, in Dockets 6959/7142, the Board approved amendments to Verizon New England Inc., d/b/a Verizon Vermont's ("Verizon"), Incentive Regulation Plan such that approximately $8 million of rate reductions would not occur; instead Verizon would commit to significantly expand the availability of broadband services within its service territory. In reaching this decision, the Board stated that "the positive elements of more widespread broadband deployment leads us to conclude that consumers will be receiving a benefit that, on the whole, outweighs the loss of the mandated rate reductions." Dockets 6959/7142, Order of 4/27/06 at 18.

Similarly, in Docket 6957, the Board determined it was in the public interest for Verizon to invest in network improvements approximately $6 million of monies that would otherwise have been provided to customers as a one-time bill credit as compensation for poor service quality. Docket 6957, Order of 6/1/05, *generally*.

And in Dockets 7725/7726, the Board authorized Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications, to fund broadband expansion to presently unserved areas with approximately $6.6 million of service quality penalties that would otherwise have been refunded to customers or used to reduce the customers' contributions to the state's Universal Service Fund. Dockets 7725/7726, Order of 2/13/12, *generally*.

(1) Alternative Windfall-Recovery Mechanisms Risk Jeopardizing the Proposed Transaction

As discussed earlier in this Order, Gaz Métro's proposal to purchase CVPS and merge CVPS with GMP is the result of an active and expensive competition to acquire CVPS. Because of this competition, Gaz Métro was required to offer CVPS public shareholders a high bid price in order to have its offer accepted by CVPS. As a result, the immediate out-of-pocket costs of this acquisition for Gaz Métro are quite significant and will have an effect on Gaz Métro's ability to earn an appropriate return and to recover its investment over time. At the same time, Gaz Métro, as the owner of GMP, is the only potential purchaser of CVPS that could provide the benefits to ratepayers that will accrue from a merger of CVPS and GMP.

Any proposals in this proceeding to provide the windfall-recovery amount of $20.9 million and to allow Gaz Métro to receive $82.4 million or more of merger savings should be seen in the context of the larger guaranteed benefits to ratepayers of $144 million, the even greater anticipated benefits from the merger, and the relative costs of the acquisition for the acquirer. The substantial benefits of the merger are benefits that could be delivered to ratepayers only through the acquisition of CVPS by Gaz Métro and were only achievable as a result of Gaz Métro's agreement to pay approximately $475 million to CVPS's shareholders to acquire CVPS and an additional $19.5 million for termination payments made to Fortis.

The CEED Fund is one component of a comprehensive package that takes into account both Gaz Métro's up-front investment and the merger benefits that will occur over time (and will be shared between ratepayers and Gaz Métro). AARP recommends that the Board modify this comprehensive package to require shareholders to provide an immediate one-time payment of the windfall-recovery amount to ratepayers. We decline to do so.

As noted above, existing CVPS shareholders will receive a substantial premium from Gaz Métro for their shares (as they also would have received from Fortis if Gaz Métro hadn't made a superior proposal to Fortis' last offer). It would not be inconsistent with the windfall-recovery provisions of our Order in Dockets 6460/6120 for current CVPS shareholders to pay a portion of this premium to CVPS ratepayers. In fact, the Board could require, as a condition of approving the acquisition of CVPS, that $20.9 million be taken for the benefit of CVPS ratepayers from the more than $475 million of sale proceeds that CVPS's shareholders will receive from Gaz Métro as a result of the acquisition.

However, such a condition would put at risk the entire transaction, including the far greater benefits for ratepayers of both companies expected from the merger (both the $144 million of benefits that will be guaranteed by the Combined Company and the prospect of $500 million in ratepayer savings over 20 years). This is because the public shareholders of CVPS approved the sale at a price of $35.25 per share. Any effective reduction in that price would prevent the transaction from closing.[101] While a new offer could be presented to current CVPS shareholders, one that would share the proceeds of Gaz Métro's purchase price with CVPS's ratepayers, an assessment of the relative benefits to be gained for ratepayers from such action versus the risks of jeopardizing the achievement of far greater benefits for ratepayers would counsel against any such attempt.

In any event, the acquisition agreement between CVPS and Gaz Métro provides for Gaz Métro to provide the windfall-recovery amount to ratepayers in the place of CVPS shareholders.[102] Since Gaz Métro was a party to Docket 7213, at the time it agreed to provide the windfall-recovery amount in the place of CVPS shareholders, it clearly was aware of the Board's Order in Docket 7213 that allowed the windfall-recovery provisions to be satisfied through the benefits provided to customers from rate-recoverable investments in energy efficiency measures. Given the Docket 7213 Order, Gaz Métro is unlikely to have entered the bidding process for CVPS with the expectation that the costs of the acquisition would be increased by $20.9 million as a consequence of providing the windfall-recovery amount related

101. Tr. 3/21/12 at 161 (Reilly). Also, under the terms of the Gaz Métro-CVPS Acquisition Agreement, CVPS is not obligated to effect the sale of CVPS if a Board Order contains any term that has the effect of reducing the price to be received by CVPS shareholders. Exh. Pet.-Joint at 51 (Section 6.3(c)).

102. Gaz Métro "shall comply with, or shall enter into an agreement or arrangement with the Vermont Department of Public Service that is deemed by the [Board] to comply with or satisfy, the terms and conditions of the Order of the [Board] in Docket No. 6120 and 6460 entered June 26, 2001 (the "Sharing Order") with regard to sharing with ratepayers and shareholders of [CVPS] any premium above book value derived from the transactions contemplated by [the Gaz Métro-CVPS acquisition agreement], up to a maximum sharing of $16 million, as adjusted for inflation." Exh. Pet.-Joint-2 at 41 (Section 5.5(d)). *See, also,* exh. Pet.-Cross-13 at 1-2.

to the acquisition in the place of CVPS's current shareholders in the form of a direct payment to ratepayers.[103]

The Board could, nevertheless, decline to follow the Docket 7213 precedent (which is discussed in more detail in the following section), and instead require, as a condition of the acquisition, that Gaz Métro provide a one-time cash payment (or bill credit) to current CVPS ratepayers that would not be recovered in the rates of the Combined Company. Such a condition would increase Gaz Métro's up-front transaction costs by $20.9 million. While the Gaz Métro-CVPS Acquisition Agreement excludes the implementation of the Dockets 6460/6120 windfall-recovery mechanism from the definition of Company Material Adverse Effect, the defined term is not used in a separate section regarding whether regulatory approvals or conditions give rise to a material adverse effect on NNEEC, the surviving corporation, and the NNEEC subsidiaries. Thus a Board Order that effectively increases the up-front cost of the transaction to Gaz Métro by $20.9 million risks the possibility that Gaz Métro could claim this was a material adverse effect and seek to terminate the acquisition.[104]

Should the acquisition be terminated, ratepayers would not receive the $144 million in guaranteed merger savings or the estimated $500 million in savings over 20 years. Opportunities for long-term savings of this magnitude are unprecedented in Vermont's electric industry. Expressed differently, if the acquisition were terminated, ratepayers would not experience the projected significant ongoing reduction in rates, below what they otherwise would be, as a result of the merger. As noted above, this reduction in cost of service is expected to ramp up to

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103. The evidence demonstrates that Fortis was also aware of the Board's Order in Docket 7213 at the time it agreed to provide $20.9 million for the benefit of CVPS customers to satisfy the windfall-recovery provisions. In fact, Fortis had discussed potentially utilizing an investment approach similar to that approved in Docket 7213, although the deal with Fortis was not contingent on such a proposal being accepted. Exh. Pet.-Cross-13 at 16.

104. We make no ruling on the merits of such a claim, which may, if it were to be raised, be litigated in court. Rather, we note the possibility that a claim might be raised, and this creates a risk that the transaction would not be consummated.

5.82 percent by year 10 after the merger, and to remain at that level in subsequent years.[105] This compares to a one-time savings of less than 7 percent,[106] if we were to deny rate recovery of the $20.9 million windfall-recovery investments, and if the acquisition still occurred.[107] We conclude that it is not in the public interest to risk long-term annual savings of 5.82 percent in the hope of attaining a one-time savings of less than 7 percent.

(2) Docket 7213 and GMP Efficiency Fund as Precedent

In considering whether our Docket 7213 Order is precedential with respect to our decision today, we start by noting that the windfall-recovery provisions for GMP in Docket 6107 and for CVPS in Dockets 6460/6120 are nearly identical.[108] Furthermore, in both Docket 6107 and Dockets 6460/6120, the Board stated that "clarity and predictability are desirable" with respect to the implementation of the windfall-recovery mechanism.[109] Thus it is clear that the Board intended to treat GMP and CVPS in a similar manner with respect to the windfall-recovery mechanism.[110]

In addition, it is true that our decision in Docket 7213 accepted two settlements (one between the petitioners in that proceeding and the DPS, and the second between the petitioners and AARP) which provided that: (1) the GMP Efficiency Fund was an acceptable means of furnishing windfall recovery; and (2) it was appropriate to recover at least some of the GMP Efficiency Fund investments in rates. However, not all parties settled in that case. In particular, IBM challenged the GMP Efficiency Fund as an appropriate means of providing windfall recovery, and the appropriateness of rate recovery of GMP Efficiency Fund investments. As a

105. *See*, finding 229, above.

106. A straight mathematical calculation of $20.9 million (the windfall-recovery amount) divided by the sum of $294.154 million (CVPS's 2010 retail rate revenues) and $17 million (the expected increase in CVPS's retail rate revenues attributable to its 2011 acquisition of the former VMPD) equals 6.72 percent.

107. If Gaz Métro were to withdraw its offer to acquire CVPS, there would be no acquisition premium, and the windfall-recovery mechanism would not be triggered.

108. *See*, Dockets 6460/6120, Order of 6/26/01 at 56-65.

109. Dockets 6460/6120, Order of 6/26/01 at 65; Docket 6107, Order of 1/20/01 at 119.

110. This was despite the fact that, in the Dockets 6460/6120 Order, the Board found that CVPS performed better in several ways than GMP and that there were fewer instances of mismanagement and poor decision-making at CVPS than GMP prior to the 2001 Orders. Dockets 6460/6120, Order of 6/26/01 at 39-40.

result, we decided those issues on their merits and not as part of a bottom-line settlement that, by its own terms, was not precedential.

AARP asserts that the Board should not consider itself to be bound by its decision in Docket 7213 for several reasons. First, AARP argues that *stare decisis* applies to legal principles and not to the application of those principles to specific facts. AARP contends that, if the facts of two cases are distinguishable (as they are in this instance, according to AARP), *stare decisis* does not govern. Second, AARP asserts that *stare decisis* does not compel a court to abide by a precedent it is convinced was wrongly decided. AARP claims that the Board's decision in Docket 7213 was wrongly decided because it failed to respect both the explicit wording and the intent of the Docket 6107 Order that included the windfall-recovery provisions. Finally, AARP contends that the strength of the *stare decisis* doctrine is at its lowest ebb when applied to administrative agencies.[111]

The Petitioners argue that the aspects of the Docket 7213 Order that AARP disputes are purely legal interpretations of the windfall-recovery provisions, which are identical to those in the Dockets 6460/6120 Order. According to the Petitioners, these conclusions do not involve any application of facts, as would, for example, issues related to the specific design of the CEED Fund. Therefore, the Petitioners contend that the doctrine of *stare decisis* supports a determination that the conclusions of the Docket 7213 Order not be disturbed. The Petitioners further assert that AARP's request that the Board not follow the Docket 7213 Order would result in two identical windfall-recovery provisions being implemented differently, which would violate the Board's express directive in both the Docket 6107 and Dockets 6460/6120 Orders that the windfall-recovery mechanisms be implemented clearly and predictably.[112]

Fundamentally, AARP is asking us to overturn our determination in Docket 7213 (which it ultimately did not oppose in that docket) that the GMP Efficiency Fund "which returns the value of the Windfall Profits to ratepayers in the form of efficiency investment, accomplishes the

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111. AARP Brief at 28-29.

112. Petitioners Reply Brief at 4-6.

goals that we set out in the Docket 6107 Order; that Order did not mandate customer refunds."[113] We decline to do so.

We find the parties' emphasis on the doctrine of *stare decisis* to be misplaced. The Vermont Supreme Court has long held that administrative bodies "are free to bind themselves by a strong doctrine of stare decisis and they are free to part rather freely from their precedents."[114] As a regulatory tribunal, we strive to foster certainty and consistency in our determinations, thus allowing utilities and other parties to understand and anticipate the basic regulatory framework that will be applied to regulated entities and their operations. Nonetheless, we recognize that our legal conclusions and policy judgments are reached in a context that requires flexible consideration of "the ever-changing facts and circumstances surrounding the subjects regulated . . . ."[115] To this end, we apply our precedents unless a party demonstrates that a different course is appropriate in order to better promote the general good of the State. With these principles in mind, the pertinent inquiries in this case are: (1) whether good cause exists for treating GMP and CVPS consistently in regard to accepting a similar windfall-recovery mechanism to satisfy nearly identical provisions in two regulatory orders, and if so, then (2) whether AARP has articulated a compelling basis for nonetheless treating these two similarly situated utilities differently.

In considering the DPS MOU proposal related to windfall recovery, it is also important to recognize that the need for a windfall recovery mechanism was not created by statute or as a result of an agreement among parties to which GMP or CVPS would be contractually bound. Rather, for the reasons set forth in the Board's Orders in Dockets 6107 and 6460/6120, the Board determined that CVPS should return a portion of any future above-market sale proceeds to its ratepayers, as a matter of fairness. The Board also defined the general parameters within which such a benefit for ratepayers would be delivered, although the details were left for later determination if such an above-market sale of CVPS occurred in the future. In this proceeding, we have examined the Petitioners' proposal against both the plain language of the Board's

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113. Docket 7213, Order of 3/26/07 at 44.

114. *Consumer Credit Ins. Assoc. v. State of Vermont, et al.*, 149 Vt. 305, 308, 544 A2d 1159, 1161 (1988) (*quoting* K. Davis, Administrative Law Text § 17.07, at 352 (3d ed. 1972)).

115. *FDA, et al., v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000) (*citing Rust v. Sullivan*, 500 U.S. 173, 187 (1991).

previous Orders and the underlying intent of that language. As we explain in this Order, the Petitioners' proposal is consistent with the goals of those previous Orders, particularly when viewed in the context of an overall transaction that provides significant financial benefit for CVPS's ratepayers. We recognize that parties may have different interpretations of the windfall recovery concept expressed by the Board in Dockets 6460/6120 (and even of what we might have preferred as a means of compensating ratepayers under the windfall-recovery mechanism), but we now nonetheless conclude that the CEED mechanism, especially in light of the reasonable regulatory reliance interest created by the Board in Docket 7213, achieves the objectives the Board set out when it established the windfall recovery concept eleven years ago. The CEED mechanism also is consistent with our past interpretation of the Dockets 6460/6120 Order as applied in Docket No. 7213, which ultimately was not challenged on appeal.[116]

Thus, we conclude that there are sound reasons for treating GMP and CVPS consistently with regard to their windfall-recovery mechanisms. As discussed above, the plain language of the Board's Order in Dockets 6460/6120 illustrates that the Board intended to treat the two utilities in a similar manner. Given the nearly identical windfall-recovery provisions in the Board's Docket 6107 and Dockets 6460/6120 Orders, it would be arbitrary for us to accept AARP's argument that our Dockets 6460/6120 Order requires customer refunds after explicitly rejecting the same argument made by IBM not too long ago in Docket 7213.

Furthermore, having considered AARP's arguments, we conclude that AARP has articulated no compelling basis for treating these two similarly situated utilities differently. In the context of reviewing the Proposed Transaction, the Board has a broad statutory duty under §§ 107 and 109 to consider whether the transaction will promote the public good of the State of Vermont. In this case, the significant and historic $144 million of direct rate benefits, with $15.5 million of these benefits guaranteed to be provided during the first three years after the merger help us find the Proposed Transaction to be in the public good. Furthermore, these benefits are only attainable if Gaz Métro purchases CVPS since Gaz Métro is the only entity that

116. Moreover, even if we found (which we do not) that the CEED mechanism was inconsistent with the precise windfall recovery concept that the Board previously created, we conclude now that (1) the CEED Fund meets the purposes of the windfall recovery mechanism and (2) good cause — in the form of $144 million in guaranteed savings over the next ten years — would exist to alter our previous judgment.

can effectuate a merger of GMP and CVPS. From this point of view, we find the CEED Fund to be an adequate mechanism for providing windfall recovery to CVPS's ratepayers, not because the Petitioners and the DPS have offered a perfect or ideal proposal, but because it represents one reasonable option and a negotiated term within a unique transaction that will directly deliver substantial and permanent savings to every single ratepayer now served by CVPS and GMP.

Furthermore, we do not find, as AARP asserts, that the facts in this proceeding with respect to the overall design of the windfall-recovery mechanism can be reasonably distinguished from the facts of Docket 7213. The evidence shows that the CEED Fund is modeled after, and contains all the core requirements of the GMP Efficiency Fund. Both the GMP Efficiency Fund and the CEED Fund include: (1) a "but for" test for selecting projects; (2) a minimum investment requirement; (3) rate recovery of investments; (4) measurement and reporting requirements; (5) a seven-year deadline for achieving the required level of benefits; (6) Board approval of the methodology for calculating net benefits; and (7) a similar plan to address the consequences of failing to achieve the required investment or level of benefits. In addition, both funds: (1) allow monies to be invested in projects related to energy efficiency programs, renewable and clean energy programs, other demand resources, and new and innovative technologies; (2) identify their beneficiaries as the ratepayers of the utility being acquired during the period in which the benefits are provided, as required by our Orders in Docket 6107 and Dockets 6460/6120; and (3) calculate net benefits for energy efficiency investments using the measurement methodology that VEIC uses in administering Efficiency Vermont projects, which is the societal test.

Nevertheless, AARP contends that there are nine significant differences between the facts in Docket 7213 and in the instant proceeding. Most of AARP's alleged differences between the facts in Docket 7213 and the instant proceeding relate to the investment of more than half of the CEED Fund monies in Weatherization or other thermal efficiency programs. AARP is correct that we expressed concerns in Docket 7213 about using GMP Efficiency Fund monies to invest in thermal efficiency programs. However, we subsequently approved the use of GMP Efficiency

Fund monies for such purposes.[117] Thus the use of CEED Fund monies for thermal efficiency programs is not a material difference from the GMP Efficiency Fund. In contrast, the GMP Efficiency Fund has never invested in the State's Weatherization Program. The expenditure of nearly half of the CEED Fund monies on low-income customers is a material difference between the CEED Fund and the GMP Efficiency Fund.[118] However, as explained further below, this difference does not affect our conclusions regarding the similarity of the overall structure of both windfall-recovery mechanisms.

AARP's first assertion is that the evidence in this proceeding is "undisputed" that there are no electric system benefits from investing in thermal efficiency while in Docket 7213 this benefit had been seen by the DPS and the Board as a prerequisite to any efficiency investment.[119] This statement is factually incorrect. There is evidence in this proceeding that investing in thermal efficiency can produce electric system benefits.[120] In addition, there is evidence that Vermont's Weatherization Program does, in fact, produce electric savings. Specifically, participants in the Weatherization Program experience average annual reductions in their electric bills of at least $78. Furthermore, the two most notable sources of electric energy savings due to thermal efficiency are more efficient electric components of home heating systems (such as fans and pumps) and reduced air conditioning demand. These measures also produce system benefits because they are highly likely to be running at the time of a winter or summer peak, respectively, and reducing peak demand reduces the need for more grid infrastructure and system capacity, the costs of which are shared among all ratepayers. Therefore, we are persuaded that it is highly

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117. Docket 7412, Order of 3/14/08 at 4.

118. There is a second material difference between the CEED Fund and the GMP Efficiency Fund which AARP did not raise. Namely, the Petitioners are committing to provide 1.2 times the windfall-recovery amount in benefits to former CVPS ratepayers through the CEED Fund, while GMP committed to provide only the amount of the windfall-recovery benefits to GMP ratepayers through the GMP Efficiency Fund. The provision of additional benefits to CVPS customers is an improvement over the GMP Efficiency Fund and does not provide a basis for concluding that our decision in Docket 7213 should not be precedential.

119. AARP Brief at 18-19.

120. *See*, e.g., exh. AARP-Cross-27 at 2-4.

likely that the Weatherization Program produces electric system benefits as well as electric savings.[121]

In Docket 7412, we approved GMP's 2008 Annual Plan for the GMP Efficiency Fund, which included spending on thermal efficiency programs. In that Order, one of the reasons we found such spending acceptable is that the programs would also produce some electric savings.[122] Since the evidence in the instant docket shows that the Weatherization Program does produce electric savings, use of the CEED Funds for the Weatherization Program is consistent with our previous determinations regarding appropriate investments for the GMP Efficiency Fund.

We note, however, that Petitioners have not yet made such a showing with respect to the additional $2 million to be spent on thermal efficiency programs for non-low-income customers. The evidence in this proceeding shows that thermal efficiency investments can produce electric savings, but there is no evidence that the specific thermal efficiency program to be proposed by the Combined Company after the stakeholder process will, in fact, provide electric savings. Therefore, our approval of this aspect of the DPS MOU is conditioned upon GMP demonstrating, at the time it submits the details of these thermal efficiency programs for our approval, that the investments in these programs will produce some electric savings.

AARP asserts that a second difference between the facts in Docket 7213 and the instant proceeding is that over half the CEED Fund will be committed to thermal efficiency with no electric system benefit while less than one-ninth of the GMP Efficiency Fund was spent on a pilot low-income program for which there was limited evidence of benefit to electric system users at the time. According to AARP, the rest of the GMP Efficiency Fund was intended to provide electric system benefits. We are not persuaded by this argument. While our Order approving the GMP Efficiency Fund noted our concerns regarding using the GMP Efficiency

121. However, it is likely that the electric savings are only a small portion of the total benefits produced by the Weatherization program.

122. Docket 7412, Order of 3/14/08 at 4. In that Order, we stated that another reason we found the investment in thermal efficiency programs to be reasonable at that time was that our approval was for only one year. However, we have approved the GMP Efficiency Fund's investment in thermal efficiency programs in each subsequent year. Therefore, we do not consider our approval of the DPS MOU's provision regarding the CEED Fund's two years of investment in the Weatherization program to be a meaningful difference.

Fund to invest in thermal efficiency programs, we did not prohibit such investment. Rather, we placed the burden on GMP to prove that such investments were appropriate. In Docket 7412 GMP met that burden and we approved investing GMP Efficiency Fund monies in thermal efficiency programs even though these programs were expected to produce benefits largely from non-electric savings.

According to AARP, a third difference between the facts in Docket 7213 and the instant proceeding is that more than half of the CEED funds will be invested in measures that will produce a societal benefit only 1.2 times the investment while the GMP Efficiency Fund investments were expected to produce a 1.5 to 2 benefit ratio. The evidence in this proceeding demonstrates that the DPS MOU's deemed 1.2 benefit-cost ratio for thermal efficiency investments is a conservative estimate of the benefits to be provided by those investments. Some research shows that when only the fuel benefits are counted, the benefit-cost ratio is 1.2.[123] Therefore, it is likely that the actual benefits from thermal efficiency investments are higher, and would result in a higher benefit-cost ratio. However, because of the costs of verifying actual savings and the one-time nature of the CEED Fund's investment in the Weatherization Program, it is appropriate to use a conservative estimate of the benefits when calculating the benefits that have been provided to CVPS ratepayers. This will ensure that the actual benefits provided to CVPS ratepayers will exceed the windfall-recovery amount as well as the higher amount to be returned to ratepayers under the DPS MOU.

AARP's fourth difference between the facts in Docket 7213 and the instant proceeding is that in Docket 7213, all the funds would be invested within the service territory of the ratepayers who deserve repayment while this may not be the case with respect to the CEED Fund. Specifically, AARP asserts that the DPS MOU does not require that the $12 million to be spent on Weatherization and other thermal efficiency projects be invested solely in CVPS's former service territory. We concur with AARP that, in order to ensure that the net benefits of the CEED Fund accrue to customers in the former CVPS service territory, it is important for all of the CEED Fund monies to be spent solely within CVPS's former service territory. While the DPS MOU may not be clear on this point, the Petitioners have testified that the $12 million will

123. Tr. 3/29/12 at 129-130 (Hopkins).

be spent on Weatherization improvements in CVPS's former service territory.[124] We require, as a condition of our approval of the merger, that all CEED Fund monies be invested in the former CVPS service territory.

AARP's fifth difference between the facts in Docket 7213 and the instant proceeding is that because such a large percentage of the CEED Fund monies will be spent on low-income Weatherization and nearly low-income thermal efficiency programs, the CEED Fund will not be able to provide appropriate benefits to other customer classes. As we noted above, the expenditure of a significant portion of CEED Funds on low-income customers is a material difference between the CEED Fund and the GMP Efficiency Fund. However, the evidence in this proceeding shows that one dollar of energy efficiency spending produces varying amounts of benefits, depending upon the customer class. For example, Efficiency Vermont's non-residential retrofit programs are projected to produce societal net benefits of between 2.71 and 2.93 over the next five years, while Efficiency Vermont's residential non-low-income retrofit programs are projected to produce societal net benefits of between 1.03 and 2.12 over the same time period.[125] Thus, benefits to different customer classes do not necessarily track spending on those classes. The DPS MOU provides that investments will be made in rough proportion to CVPS customer classes, with the intention of achieving net benefits in rough proportion as well. We expect GMP and the Combined Company to strive to achieve such a distribution of net benefits, despite the significant investment in the Weatherization Program.

The sixth distinction asserted by AARP between the facts in Docket 7213 and the instant proceeding is that the effect of the DPS MOU is to raise electric rates in order to pay for thermal efficiency improvements, which was not contemplated when the GMP Efficiency Fund was approved. Our Order in Docket 7213 expressly notes that GMP had suggested using GMP Efficiency Funds to invest in thermal efficiency improvements, and that:

> if GMP seeks to implement energy efficiency measures directed at non-electrical uses, it will have a heavy burden of persuasion. GMP would also bear the burden

124. Tr. 4/3/12 at 69-70 (Griffin).

125. Exh. Pet.-JJP-2.

> of showing that those administrative and regulatory costs benefit its ratepayers if it should seek to recover those costs in electric rates.[126]

Thus, the possibility of using electric ratepayer funds to pay for thermal efficiency improvements was contemplated, but not resolved, in Docket 7213. Subsequently, in Docket 7412, we approved the use of GMP Efficiency Fund monies (which are recovered from electric ratepayers in rates) for thermal efficiency programs. Even as we did so we stated that: "We continue to have concerns about the use of money collected from electric ratepayers to fund programs that produce benefits largely from non-electric savings."[127]

Even though AARP's assertion is incorrect, we do not wish to downplay the seriousness of the issue raised by this argument. We firmly subscribe to the general principle that funds collected through electricity rates should only be used for investments related to the electric system or electric usage. However, our Orders in Dockets 6107 and 6460/6120 provided only that a benefit be furnished to ratepayers, not that an electric system benefit be provided to ratepayers.[128] While we would greatly prefer that an electric system benefit be provided, GMP persuaded us that in order for the GMP Efficiency Fund to return an appropriate level of benefits to residential customers, it would need to invest in non-electric savings. Similarly, in this proceeding the Petitioners have persuasively argued that the greatest efficiency opportunities for residential customers are in thermal efficiency retrofits to residential buildings heated with unregulated fuels.[129] Nevertheless, we emphasize that we view the windfall-recovery mechanisms as involving very unique circumstances, and our decisions to allow recovery in electric rates of investments in thermal efficiency programs for the limited purpose of fulfilling the Docket 6107 and Dockets 6460/6120 windfall-recovery provisions should not be construed as precedential in other circumstances.

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126. Docket 7213, Order of 3/26/07 at 39.

127. Docket 7412, Order of 3/14/08 at 4.

128. "Any such procedure [for windfall recovery] must ensure that *the benefit* provided to ratepayers is in addition to (rather than a replacement for) other benefits appropriately assigned to ratepayers at the time of the future sale, merger or acquisition." Dockets 6460/6120, Order of 6/26/01 at 65, quoting Docket 6107, Order of 1/23/01 at 116 (emphasis added).

129. *See*, finding 352, above.

The seventh difference between the facts in Docket 7213 and the instant proceeding asserted by AARP is that there will be no stakeholder and Board pre-approval of $10-12 million of the $20.9 million CEED Fund while all GMP Efficiency Fund monies were subject to a stakeholder review process and required Board pre-approval.[130] AARP is correct that there will be no stakeholder review of the $10 million to be invested in the Weatherization Program;[131] however, it is incorrect to assert that the Board will not have the opportunity to approve these expenditures. Rather, this Order constitutes such Board approval. We determine that it is appropriate to approve the Weatherization expenditures now, without prior stakeholder review, for two reasons. First, the Weatherization Program is an established State program that is overseen by the Office of Economic Opportunity, and administered by the community action agencies according to detailed rules regarding eligibility and acquisition of services. Thus there is no uncertainty regarding the design of the program. Second, immediate approval of these expenditures will enable the investments to be made earlier than they could be if they needed to be reviewed by stakeholders first, and because of the time value of money, earlier investments provide greater benefits to CVPS customers.[132]

AARP asserts that the eighth difference between the facts in Docket 7213 and the instant proceeding is that the $10 million to be invested in the Weatherization Program may occur on a first-come first-served basis to community action clients since the funds will only meet a fraction of the need for Weatherization services, while the Board approved the eventual settlement in Docket 7213 only after determining that it no longer involved first-come first-served allocation of the benefits. In Docket 7213, our primary concern regarding the GMP Efficiency Fund's original low-income pilot program was that, because funding was limited in each year and would

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130. AARP separately asserts that because details of the Weatherization Program's operations were not presented in this proceeding and there will be no stakeholder review of the $10 million to be invested in the Weatherization Program, the DPS MOU does not meet all the standards that the DPS had previously set forth in prefiled testimony for satisfying the Dockets 6460/6120 windfall-recovery provisions. AARP Reply Brief at 11.

We disagree. As discussed above, the Weatherization Program is an established program overseen by another state agency and administered by the community action agencies according to detailed rules. There is no need for a stakeholder process to flesh out the design of the program.

131. There will be stakeholder review and Board approval of the additional $2 million in thermal efficiency investments. Tr. 4/4/12 at 94-95 (Miller).

132. Tr. 3/29/12 at 137 (Hopkins); tr. 4/4/12 at 100-101 (Miller).

be provided on a first-come, first-served basis, the program could result in unjust discrimination. That is, two similarly situated customers could be treated differently under the pilot program based solely on the timing of their applications.[133] We ultimately approved a low-income pilot program funded by the GMP Efficiency Fund that did not result in unjust discrimination.[134] In the instant proceeding, the Weatherization Program is a mature program that: (1) has been in place for years; (2) already has detailed rules regarding eligibility and acquisition of services; and (3) already has a waiting list for services.[135] For these reasons, we are not concerned that investment of CEED Fund monies in the Weatherization Program will lead to unjust discrimination.

AARP's final difference between the facts in Docket 7213 and the instant proceeding is that under the merger agreement and the DPS MOU, Gaz Métro is assuming responsibility for providing CVPS's windfall-recovery amounts, while in Docket 7213, GMP remained liable for satisfying the Docket 6107 Order. We determined in Docket 7213 that "the pivotal requirement [of the windfall-recovery provisions] was the mandate that ratepayers receive the benefit, not that it come from a specific source."[136] Therefore, which entity is responsible for providing the benefits is not relevant to our consideration of whether the CEED Fund is substantially similar to the GMP Efficiency Fund.

Thus, after considering all of AARP's assertions regarding the differences between the facts in Docket 7213 and the instant proceeding, we conclude that while there are some differences between the CEED Fund and the GMP Efficiency Fund (most notably that the CEED Fund will invest $10 million in the State's low-income Weatherization Program in CVPS's service territory) the essential characteristics of the funds are substantially similar. As a result, our decision that the GMP Efficiency Fund satisfied the Docket 6107 windfall-recovery provisions is precedential with respect to whether the CEED Fund satisfies the Dockets 6460/6120 windfall-recovery provisions.

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133. Docket 7213, Order of 3/29/07 at 44.
134. Docket 7213, Order of 3/29/07 at 2.
135. Tr. 4/4/12 at 89-90, 97-98 (Miller).
136. Docket 7213, Order of 3/26/07 at 40.

This determination also addresses AARP's argument that the Petitioners have not provided a legal basis on which the Board could determine now, outside of a rate proceeding, that windfall-recovery investments will be included in rate base, as provided in the DPS MOU.[137] AARP discusses at length previous Board orders in which the Board determined that, except in extraordinary circumstances, pre-approval of cost recovery cannot be allowed.

However, AARP failed to cite the most relevant precedent — our Docket 7213 Order. In that Order we approved in principle the inclusion of GMP Efficiency Fund investments in rates, despite the fact that GMP had not identified specific projects or investments that it would make, and many of the GMP Efficiency Fund's implementation details and standards were defined only at a conceptual level.[138] In that Order we agreed with the DPS that these outstanding issues could be addressed through our annual reviews of the GMP Efficiency Fund, and we stated our intention to "carefully examine proposed investments to ensure that they represent incremental benefits . . . ."[139]

The Petitioners in this proceeding have provided more information about the CEED Fund's implementation details and standards than GMP did in Docket 7213, and have identified one specific investment — the Weatherization Program, which is a long-established program with well-defined practices and procedures that is overseen by another state agency and that is known to produce benefits for participants.[140] This is sufficient information for us to approve the inclusion of the funds invested in the Weatherization Program in rate base, and we expect to exercise the same review of other proposed investments during our annual reviews of the CEED Fund that we did during our annual reviews of the GMP Efficiency Fund. Therefore, our decision to approve the provision of the DPS MOU that provides for inclusion of CEED Fund investments in rate base is consistent with Board precedent.

In addition, we will require that an independent review of the CEED Fund's performance be undertaken after the third year of the CEED Fund's operation, as provided for in the DPS MOU. The purpose of this review will be to evaluate the CEED Fund's performance and suggest

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137. AARP Reply Brief at 5.
138. Docket 7412, Order of 3/29/07 at 38.
139. Docket 7412, Order of 3/29/07 at 39.
140. Tr. 4/4/12 at 89-90 (Miller); tr. 3/29/12 at 125-126 (Hopkins).

improvements to program design and/or execution. This review should provide further certainty that the CEED Fund investments are appropriate for recovery from ratepayers.

Furthermore, related to rate recovery of CEED Fund investments, we note that under the DPS MOU, if the Combined Company has not invested the full $20.9 million (as further increased for inflation) within seven years of the date of this Order, any shortfall will be provided to CVPS customers on a uniform percentage basis in the form of a bill refund. While the DPS MOU does not expressly state that the amount of any such bill credits would not be recovered in rates, the Petitioners have stated that this was the intent.[141] Therefore, we condition our approval of the transactions on the following clarification of the DPS MOU: if the Combined Company provides bill credits to customers in the former CVPS service territory because the Combined Company has not invested the full windfall-recovery amount within seven years of the date of this Order, the full amount of the bill credits will not be recoverable in rates. This condition has the added benefit of providing the Combined Company with an incentive to invest the CEED Fund monies (and thereby provide benefits to ratepayers) within the allotted seven-year time period since there will be financial consequences for the Combined Company's shareholder if the investment is not made.

In addition, we require that, if any additional investments in excess of $20.9 million (adjusted for inflation) are required to deliver $46 million in benefits to CVPS customers, these additional investments will not be recoverable in rates. This condition provides the Combined Company with an incentive to ensure that the CEED Fund monies are invested appropriately such that they yield the necessary benefits to CVPS customers. The Combined Company should bear this responsibility, and experience financial consequences if it fails to meet it.

Finally, we do not conclude, as AARP argues, that it is necessary for the Petitioners to provide a means of calculating how much of the societal benefit from CEED projects actually will be received by CVPS ratepayers. The GMP Efficiency Fund used net societal benefits to provide GMP's windfall-recovery amount.[142] Thus, it is consistent with Board precedent for the CEED Fund to use net societal benefits to provide CVPS's windfall-recovery amount.

141. Tr. 4/3/12 at 145 (Griffin).

142. Docket 7213, Order of 3/29/07 at 35.

2. Acquisition by VLITE of Controlling Interest in VELCO and VELCO Governance Issues

The effects of the Proposed Transaction on the ownership and control of Vermont's transmission system have been the subject of intense scrutiny in this Docket. In order to put this issue into perspective, it is helpful to review the origins and purposes served by VELCO, the company that manages and operates Vermont's transmission backbone.

VELCO was formed as a Vermont public service company in 1956 by Vermont's electric utilities to facilitate non-discriminatory access to clean, low-cost power generated by the St. Lawrence River Project. As Vermont's demand for electricity began to grow in the 1950s, the St. Lawrence River Project offered the distribution utilities an inexpensive source of power. But for VELCO's formation, the St. Lawrence River power effectively would have remained unavailable for Vermont's small utilities because they were not meaningfully connected to a transmission system with backup power capabilities.

At its inception, VELCO was the nation's first transmission-only company. Recognizing the future benefit to Vermont from the continued existence of a statewide transmission company even after the expiration of the St. Lawrence River Project power contract, the Board authorized the incorporation of VELCO after determining that the "general good of the State of Vermont will be promoted" by issuing the company a certificate of public good for the purpose of transmitting "electric power and energy."[143] VELCO's formation required Vermont's three largest utilities at the time — CVPS, GMP and Citizens Utilities — to transfer their transmission assets to VELCO in exchange for equity in the new company. In due course, all of Vermont's electric distribution utilities became owners of VELCO as they acquired ownership shares in rough proportion to the amount of load served by each of those utilities.[144]

Since 1956, VELCO has expanded and maintained the high-voltage transmission system in Vermont. For many years, VELCO has been part of Vermont's collective voice at New

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143. Exh. VELCO-CLD-1.

144. As of the filing of the Petition, the ownership of VELCO was allocated as follows on a percentage basis: CVPS (48.5 percent); GMP (29.5 percent); VPPSA, WEC and SED, combined (8 percent); VEC (8 percent); BED (6 percent). Powell & Reilly joint pf. at 20-21.

England Power Pool and has advocated for Vermont's interests at ISO-New England. Furthermore, since the early 1980s, VELCO, through its subsidiary, Vermont Electric Transmission Company, Inc., has operated and managed a DC-current transmission line that carries Canadian-produced power to New England.

Until recently, VELCO owned the transmission assets used to provide regulated electric transmission service to Vermont's private and public electric distribution companies. Then, in 2006, VELCO's shareholders undertook a corporate reorganization and created a limited liability company — VT Transco — in order to obtain the substantial tax savings available to such limited liability companies.[145] These tax savings were passed on to the retail customers of VELCO's shareholder utilities, who thereby were able to include lower transmission costs in their retail rates. VT Transco now owns the transmission assets while VELCO manages VT Transco and the transmission system pursuant to a contract between the two companies.[146] The reorganization of VELCO in 2006 did not change the controlling role of VELCO's Board in making the overarching, material decisions regarding financing and major capital investments in the high-voltage transmission system now owned by VT Transco.[147]

To date, the VELCO Board has been comprised of the executives and board members of Vermont's investor-owned distribution utilities and the larger municipal and cooperative utilities, as well as independent directors. In recent years, independent directors have been recruited specifically to provide their particular expertise as the company's needs required. For instance, at present, two of the three independent VELCO directors hail from the construction industry and were invited to serve on the VELCO Board as the company launched a major capital construction campaign in 2004.

Thus, for over 50 years, VELCO has existed and operated as a private, for-profit Vermont corporation engaged in the business of providing transmission services for its shareholder-owners, Vermont's electric distribution utilities. With this history in mind, we turn to considering the effects of the Proposed Transaction on the operation and management of VELCO, given that both

145. Docket 7174, Order of 6/20/06.

146. Exh. VELCO-CLD-2 at 1-2.

147. Dutton pf. at 7.

GMP and CVPS own substantial portions of the company's shares. If GMP were to simply acquire CVPS's stake in VELCO without further conditions, then GMP would own 78 percent of VELCO's shares, thus transforming GMP into VELCO's dominant shareholder with the unilateral power to elect all of VELCO's directors and to control their policy deliberations and decisions.[148] In short, GMP could exercise sole control over Vermont's transmission system — an undesirable outcome that would radically alter the existing balance of power in the management and operation of Vermont's power grid. Thus, the public interest requires that steps be taken to mitigate this effect of the Proposed Transaction.

At the outset of this Docket, several parties proposed a variety of approaches for the Board to adopt in crafting suitable mitigation conditions to prevent the Combined Company from exercising majority shareholder control over VELCO. Then, as the technical hearings progressed, the Department negotiated an agreement with the Petitioners — the DPS MOU — that offered a solution for the majority shareholder problem raised by GMP's proposed acquisition of CVPS's stake in VELCO.

Among other things, the DPS MOU sets forth the following merger conditions to restrain GMP from exercising unilateral control of VELCO and VT Transco as a dominant majority shareholder:

> First, a requirement for the Petitioners to effect the transfer to VLITE of 38 percent of the total of VELCO Class B voting common stock and 31.7 percent of the total of VELCO Class C non-voting common stock.[149] This transfer will reduce the combined CVPS and GMP Class B voting common stock from 78 percent of the total to approximately 40 percent.[150]
>
> Second, a requirement that neither CVPS nor GMP may seek to increase their ownership share of VELCO in any amount or take steps that would result in a dilution of the percentage ownership of VELCO by VLITE without Board approval.[151]

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148. Pursuant to Vermont law, all corporate powers "shall be exercised by or under the authority of, and the business and officers of the corporation managed under the direction of, its board of directors." 11A V.S.A. § 8.01(b).

149. Exh. Pet.-DPS-1 at ¶ 7. As required by the DPS MOU, the Petitioners will use their best efforts to obtain a waiver from other VELCO owners of their right of first refusal. Exh. Pet.-DPS-1 at ¶ 10.

150. Finding 264, above.

151. Exh. Pet.-DPS-1 at ¶ 14.

> Third, a requirement for the Petitioners to take all actions necessary to assure that the Combined Company cannot unilaterally remove VELCO as the managing member of VT Transco or amend Section 9.3 of the VT Transco Operating Agreement.[152]

Additionally, the DPS MOU further reduces the Combined Company's influence over the governance of Vermont's electric transmission system by allowing the Combined Company only four seats out of thirteen on the VELCO board of directors (rather than the six seats that GMP and CVPS presently hold).[153]

The DPS MOU also contains provisions that supply more definition and direction for VLITE as a public benefit, nonprofit corporation that will own an interest in VELCO and disburse its income from VELCO dividends in support of state energy policies.[154] Pursuant to the terms of the DPS MOU, VLITE will be governed by a board of directors drawn from public service and representatives of the energy, utility, and consumer-advocate sectors.[155] In turn, VLITE will be entitled to select three qualified individuals with a broad range of relevant experience for nomination to the VELCO board of directors.[156]

We find that these provisions in the DPS MOU will adequately ensure that after the closing of the Proposed Transaction, the Combined Company will not be able to exercise majority shareholder control over VELCO and Vermont's electric transmission system. For one, the Combined Company will be required to cede majority control of VELCO by transferring 38 percent of its Class B voting shares and 31.7 percent of its Class C non-voting shares to VLITE, an independent entity designed to provide "a meaningful 'swing-vote' between the influence of the various owners of the transmission assets in Vermont, through input of those vested with a public-interest purpose."[157] For another, the Combined Company will be prevented from usurping VELCO's control and management of Vermont's transmission system — though the Combined Company will acquire a 72 percent ownership interest in VT Transco as a result of

152. Exh. Pet.-DPS-1 at ¶ 13. Section 9.3 of the VT Transco Operating Agreement is a provision designed to protect the interests of minority shareholders.

153. Exh. Pet.-DPS-1 at ¶ 11(b).

154. Exh. Pet.-DPS-1 at ¶ 9.

155. Exh. Pet.-DPS-1 at ¶ 8.

156. Exh. Pet.-DPS-1 at ¶ 9.

157. DPS Brief at 4.

the merger, the third condition ensures that the Combined Company will not have the power to unilaterally install a new manager of VT Transco who is allied solely with the Combined Company and the advancement of its interests alone.

With the exception of SED, no active party to this proceeding has opposed the foregoing terms of the DPS MOU.[158] SED objects to the proposed transfer of VELCO shares to VLITE, which SED views as a device GMP has chosen to circumvent the statutory protections afforded to the minority owners of VT Transco.[159] SED claims that the proposed transfer of 38 percent of VELCO shares to VLITE effectively creates "a new, de facto member of Vermont Transco, in contravention of 11 V.S.A. § 3054(c)(7)."[160] However, no party has proposed in this proceeding to confer any form of membership in VT Transco upon VLITE. VELCO and VT Transco are two distinct legal entities, as reflected by their respective indices of corporate existence, such as their separate by-laws, articles of incorporation, and certificates of public good. While it is true that VELCO's function is to operate and manage VT Transco, this business purpose neither legally nor logically signifies, as SED suggests, a conflation of the ownership and governance of VELCO with the ownership and governance of VT Transco. Therefore, SED's argument based on Section 3054(c)(7) is without foundation.

From a mechanical perspective, by creating VLITE as a new VELCO shareholder with a sizeable ownership interest and appurtenant shareholder rights to be exercised independently, the DPS MOU achieves the goal of mitigating the Proposed Transaction's effect of concentrating majority shareholder power. However, the nature and quality of how VELCO conducts its business depends on more than simply determining who should own how much of the company to protect against majority shareholder dominance. Of equal importance is the nomination and

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158. AIV, the Group of 46 Ratepayers and VPIRG have conveyed positions to the Board through comments and prefiled testimony that, to various degrees, would appear to be inconsistent with the terms of the DPS MOU regarding VELCO governance. However, we note that none of these parties participated in the technical hearings, especially on those days after the DPS MOU was admitted into evidence and the witnesses testifying in support of this settlement were available for cross-examination. Nor did these parties elect to file briefs explaining why the Board should disregard the DPS MOU terms in favor of their own positions. Accordingly, we deem these parties to have waived any objection to the DPS MOU.

159. SED Brief at 10.

160. Section 3054(c)(7) requires the members of a limited liability company to approve the addition of new members.

selection of the individuals who direct VELCO in the formulation of its policies and the management of its business. Given the critical public interest that VELCO serves as the operator and manager of Vermont's transmission backbone, it is imperative to ensure that VELCO's directors are drawn from the ranks of the "best and the brightest" leaders available to serve on its board.

The DPS MOU contains several provisions designed to address the issue of VELCO governance after the Proposed Transaction is consummated. These terms include: (1) a requirement that the Petitioners elect to the VELCO Board the initial VLITE-nominated directors as designated by the Department, who in turn is obliged to select these initial nominees on behalf of VLITE from among representatives of state government agencies, energy policy interest groups, consumer and low-income advocates, and public power utilities; (2) a requirement going forward that GMP, CVPS, and VLITE enter into a voting agreement providing for mutual support in the designation of several VELCO directors; (3) a requirement that GMP support the amendment of VELCO's bylaws to formalize the process of nominating and electing VELCO directors and to allow VT Transco owners to participate in the VELCO Operating Committee; and (4) a requirement for the VELCO Board to include two independent directors to be nominated by the cooperatives and municipal utilities, to provide further balance to the VELCO Board.[161]

Having examined all of the testimony in the record on this topic, we find the parties to the DPS MOU have proposed a reasonable exercise of the ordinary powers vested in corporate shareholders to enter into agreements for structuring corporate governance.[162] For this reason, we conclude that there is no need at this time for the Board to exercise any regulatory authority in this regard.[163]

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161. Exh. Pet.-DPS-1 at ¶8, ¶¶11-12.

162. *See* 11A V.S.A. § 7.32(3) (authorizing shareholder agreements that establish "who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal") and § 7.31 (authorizing shareholder voting agreements).

163. We note VPPSA's argument that the Board "has no authority or need to involve itself in internal corporation governance details of VELCO or its shareholders." VPPSA Brief at 9. We disagree. The Board's authority to intervene in matters of corporate governance is evident in the statutory scheme of Title 11A, Vermont's code for the formation and administration of for-profit corporations. VPPSA correctly points out that Title 11A empowers a company's directors to organize and administer the process of corporate governance. However, that same statutory scheme also provides that business corporations such as VELCO that are "subject to regulation under another

(continued...)

For the most part, the parties to this proceeding do not oppose the terms in the DPS MOU for structuring the governance of VELCO once the Combined Company comes into being. However, we must address some remaining areas of disagreement and requests for refinement of the DPS MOU. We begin with the issue raised by BED, who supports the governance terms of the DPS MOU, but who remains concerned that VELCO's governance will be unduly politicized because "a department of the executive branch would appoint the initial board of directors of VLITE."[164]

Given VELCO's pivotal role as the manager of the transmission backbone of Vermont's power grid, we agree there is a need to ensure that the quality of VELCO Board deliberations is not compromised as a by-product of creating VLITE, whose power to nominate and elect VELCO directors is intended to bring a diverse, public-interest perspective to bear on the VELCO Board's deliberations. For this reason, we strongly encourage the Petitioners and VLITE to take all steps necessary to ensure (1) that no VLITE director, officer or employee may serve as a VELCO Director, and (2) that independence criteria are established and applied to the nomination of any VELCO Director by VLITE or the municipal/cooperative distribution utilities. At a minimum, we would suggest the "independence criteria" provide that such director-nominees for VELCO's Board shall have no significant business, financial, or familial relationship with (1)VELCO or any of its shareholders, officers and directors, or (2) any of the shareholders, officers or directors of VELCO's shareholders. A suitable model for appropriate "independence criteria" would be the New York Stock Exchange standards for independent directors.[165]

WEC supports the DPS MOU, but believes that it is incomplete in regard to Section 11(c), the provision pertaining to the nomination of two independent VELCO directors by "public

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163. (...continued)
statute" such as Title 30 may incorporate "only if permitted by, and subject to all limitations of the other statute . . . ." 11A V.S.A. § 3.01(b)(3). In turn, Title 30 provides that the Board has the jurisdiction "to hear, determine, render judgment and make orders and decrees in all matters provided for in the charter or articles of any corporation owning or operating any plant, line or property subject to supervision under this chapter . . . ." 30 V.S.A. § 209(a). Finally, no company subject to Title 30 regulation may amend its articles of incorporation — the instrument governing the number and election of a corporation's directors — without a certification from the Board that the amendment will promote the general good of the state. 30 V.S.A. §104. Therefore, we find that Vermont law vests the Board with ample authority to regulate VELCO's corporate governance process.

164. BED Reply at 4.

165. *See* NEW YORK STOCK EXCHANGE LISTED COMPANY MANUAL § 303A.02 (Nov. 25, 2009).

power" utilities.[166] WEC would like the Board to address this concern by ordering that these independent "public power" directors of VELCO shall be nominated by "BED, VEC, VPPSA, WEC and SED," with each of these entities having "one equal vote." However, we decline to issue such a directive, as we find WEC's approach to be inconsistent with the language of Section 11(c), which provides for two independent VELCO directors to be nominated by "those owners of VELCO that are municipal electric distribution utilities or member cooperative electric distribution utilities, including those electric distribution utilities that do not otherwise maintain seats on the VELCO board of directors."[167] The effect of adopting WEC's proposal would be to rewrite Section 11(c) as it would void the individual nomination voting rights now granted to each municipal utility in favor of vesting VPPSA with a single vote on behalf of its municipal-utility membership. WEC has presented no compelling reason for disturbing the nomination rights and process set forth in Section 11(c) by the signatories to the DPS MOU.

We turn next to the arguments of SED who, among the VELCO owners, is the lone opponent to the DPS MOU's proposed changes to VELCO's governance structure. SED's opposition stems principally from its belief that these changes permanently and wrongfully exclude SED from holding a seat on the VELCO Board and thus participating in the management of the company.

According to SED, the proceedings in this Docket have failed to produce a more appropriate resolution to the VELCO governance question than the DPS MOU because VELCO's governance was unduly complicated by the unnecessary decision in 2006 to reorganize VELCO to manage Vermont's transmission infrastructure while creating VT Transco to own those assets.[168] Thus, SED contends it would be a "mistake" for the Board to accept the DPS MOU proposal and its reliance upon the existing two-company structure in addressing the VELCO governance concerns because this dual configuration "further distances investment in the transmission system

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166. WEC Brief at 8.

167. Exh. Pet.-DPS-1 at ¶ 11(c).

168. SED Brief at 8. To the extent that SED seeks to use this proceeding as a forum for challenging the merits of VT Transco's creation, we find this argument unavailing, as it improperly invites us to set aside our final Order in Docket 7174 without a showing by SED that its arguments would pass muster under the procedural and substantive standards for seeking reconsideration of that order.

from its management contrary to principles of good corporate governance."[169] That said, from SED's point of view, if this two-company structure is to be retained, then the simplest thing to do would be to assign each member of VT Transco a seat on the VELCO Board, in addition to the seat customarily held by the CEO of VELCO. In the alternative, SED insists that it at least is entitled to comparable treatment with VEC and BED, both of whom presently serve on the VELCO Board though their respective ownership stakes in VT Transco at present are smaller than SED's ownership share.

We do not find SED's arguments to be persuasive. While it is true that SED's ownership stake in VT Transco presently is larger than VEC's and BED's interest, this is a temporary state of affairs.[170] The fact remains that SED is a small utility with far fewer customers than either VEC or BED.[171] The VELCO Board has long observed a policy of allowing utilities with a larger customer base and financial risk in VELCO to have a greater influence over decisions affecting the transmission system.[172] SED has not presented any persuasive reason why the Proposed Transaction should serve as a catalyst for the Board to cause the VELCO Board to depart from this policy.

SED further argues that the composition of the VELCO Board should change relative to the fluctuation in ownership interests in VT Transco.[173] However, SED has adduced no compelling evidence to support this approach to corporate governance. If we were to accept SED's proposal, then GMP would become vested with unilateral control of both VT Transco and VELCO — absent regulatory intervention, the Proposed Transaction would elevate GMP's ownership stake in VT Transco to the point where GMP would become the controlling

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169. SED Brief at 8-9.

170. As of August 31, 2010, SED holds a 4.89 percent interest in VT Transco, most of which represents specific-facility-membership units. Exh. VELCO-CLD-8 at Schedule A. Stowe's specific-facility-membership units were created in settlement of a litigation proceeding at FERC. Exh. VELCO-CLD-8 at § 3.3(h). Stowe uses these specific-facility-membership units to finance its cost share of transmission upgrades as determined under the 1991 Vermont Transmission Agreement. Exh. VELCO-CLD-8 at § 3.3(h); Dutton pf. at 6. SED's ownership interest in VT Transco will change when its specific-facility-membership units are reoffered to VT Transco's members as required by the VELCO Operating Agreement. SED Brief at 7; exh. VELCO-CLD-8 at § 3.3(i).

171. Tr. 4/4/12 at 22-23 (Powell).

172. Dutton pf. at 20-21.

173. SED Brief at 7.

shareholder in VT Transco with sufficient voting power to dominate the nomination and appointment of VELCO's directors. Thus, SED's preferred approach to shaping VELCO's governance structure would do nothing to mitigate the very policy concern that has occasioned the examination of the governance issue in this docket, namely, the need to ensure that the proposed merger does not result in VELCO being controlled by a sole majority shareholder.

Having carefully considered SED's argument for why it should receive a seat on the VELCO Board, we decline to order such relief. SED will have other opportunities to influence both the management of VELCO and the policies formulated by its directors. For one, the DPS MOU expressly provides that SED, along with like-situated municipal electric distribution utilities, will have the power to nominate two independent VELCO directors. For another, SED is able to participate in VELCO's Operating Committee — a forum that has a documented record of serious and substantive deliberations regarding policies and events that affect the transmission interests of Vermont's distribution utilities.[174] Finally, SED has the option of rejoining VPPSA and participating in VPPSA's exercise of its powers as a VELCO director.

In sum, we conclude that the provisions of the DPS MOU dealing with the creation of VLITE, the governance of VELCO and the management of VT Transco will promote the general good of the State of Vermont. These provisions will appropriately guard against any majority shareholder domination as an effect of the Proposed Transaction while also thoughtfully advancing the public good by injecting VELCO's board deliberations with a public interest perspective through the addition of the directors to be nominated by VLITE.

3. Financial Integrity Proposals ("Ring-Fencing")

NNEEC's acquisition of CVPS, its existing ownership of GMP and Vermont Gas, and the subsequent proposed merger of CVPS and GMP, raise a number of concerns regarding the relationship of these Vermont regulated utilities with their parent companies and other affiliates. These are questions that the Board also considered in connection with the acquisition of GMP in 2007.

174. Exh. VELCO-CLD-5.

The Board's Order in 2007 approving the acquisition of GMP by NNEEC and Gaz Métro included various conditions to address these concerns. These conditions (i) required that GMP be maintained as a structurally separate and stand-alone company, (ii) regulated transactions with affiliates, (iii) provided for cost and cash-flow separation and for appropriate cost allocation between GMP and its affiliates, and (iv) required notice of certain changes in GMP's capital structure in GMP's short-term borrowing capacity.[175]

The DPS MOU in this proceeding would add some additional requirements and would modify and/or provide somewhat greater specificity with respect to some existing requirements. These requirements would apply to GMP, as the Combined Company, going forward and are set forth in the findings under the subheading "Financial Integrity Proposals ('Ring-Fencing')" above. The additional requirements generally relate to: loans; dividends, distributions and transfers to affiliates; certain transfers of assets in excess of $5 million; and the use of financing proceeds. They also provide the Board and Department access to written information pertaining to the Combined Company that is provided by Gaz Métro, NNEEC, or NNEEC subsidiaries to bondholders or credit rating analysts.

In general, the DPS MOU provides greater specificity with respect to the regulation of GMP's relationship with its affiliates than in the 2007 Order. It does, however, modify some of the applicable thresholds in part related to the fact that the Combined Company will be a significantly larger company than GMP currently is. GMP will have to report all affiliate transactions on an annual basis in a report to the Department and the Board, which requirement did not previously exist.[176] In addition, GMP will now provide advance notice to the Board and the Department if its unused, short-term borrowing capacity were to fall below $25 million, while previously the applicable threshold was $15 million.

The financial integrity measures set forth in the DPS MOU provide reasonable and acceptable safeguards with respect to maintaining the Combined Company as a structurally separate and stand-alone company and protecting customers from inappropriate affiliate transactions. However, we note a qualification in paragraph 22i to one of the requirements in the

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175. Docket 7213, Order of 3/26/07 at 47.

176. Exh. Pet.-DPS-1 at ¶ 22d(iv).

DPS MOU that was not explained by the parties and is unacceptable to the Board. Paragraph 22i provides for notice of certain transfers, dividends and loans by GMP to affiliates "unless such a disclosure is determined by a governmental authority to be unlawful." This qualification could be interpreted as a limitation on the Board's existing powers based on a ruling by any governmental authority. The Board notes that this provision of the DPS MOU appears to be based on an earlier recommendation of one of the Department's witnesses that required such notice "unless such a disclosure is determined to be unlawful **by the Board**" (emphasis added).[177] GMP indicated in its testimony it did not oppose this requirement.[178] Accordingly, in accepting the MOU, the Board deletes the qualifying phrase at the beginning of paragraph 22i of the DPS MOU.

VIII. CONCLUSION

For the foregoing reasons, we have determined that the Proposed Transaction, subject to the conditions set out in this Order, will promote the general good of the state pursuant to 30 V.S.A. §§ 104, 107, and 109. We further conclude, pursuant to 30 V.S.A. § 311, that the Proposed Transaction will not obstruct, prevent or impair competition in Vermont's electric utility sector. In reaching these conclusions, we rely primarily upon the substantial, immediate and direct ratepayer benefits that are uniquely a function of merging CVPS with GMP — both the guaranteed $144 million in rate benefits and other reasonably projected future rate and service benefits for the customers of the Combined Company.

Our decision to approve the Proposed Transaction required a careful balancing of interests and concerns in order to determine how best to promote the general good of the state. We recognize that there is disagreement among the public at large as to the merit of some individual features of the Proposed Transaction. However, having weighed the evidence in the entirety, it is our judgment that the greater public good lies in securing the total benefits of the Proposed Transaction, even if it means accepting some terms that are not necessarily ideal. On balance, we are persuaded that Vermonters will be well-served by the significant economic changes and efficiencies that will flow from merging the state's two largest electric utilities.

177. Wilson pf. at 48-49.
178. Bugbee pf. reb. at 3.

From past experience with large-scale utility mergers, we have found that the success or failure of such transactions depends significantly upon careful and realistic integration planning and execution. Therefore, we emphasize that the Combined Company must expect to be held fully accountable in realizing the projected savings and efficiencies that rank first among our reasons for approving the Proposed Transaction. Going forward, we will closely scrutinize the Combined Company's progress in delivering on its promises to Vermonters.

To the extent the findings in this Order are inconsistent with any findings proposed by any party, such proposed findings are hereby rejected.

IX. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. As described and referenced above and subject to the conditions set forth herein:

(a) the acquisition by Vermont Low Income Trust for Electricity, Inc. ("VLITE") of 38 percent of the voting securities of Vermont Electric Power Company, Inc. ("VELCO") and of an indirect controlling interest in Vermont Transco LLC ("VT Transco"), and Vermont Electric Transmission Company, Inc. ("VETCO" and, together with VELCO, and VT Transco, the "VELCO Companies") will promote the public good and is approved pursuant to 30 V.S.A. § 107,

(b) the acquisition by Northern New England Energy Corporation ("NNEEC") of all the outstanding shares of common stock of Central Vermont Public Service Corporation ("CVPS") and the acquisition by Gaz Métro Limited Partnership ("Gaz Métro") of an indirect interest in all such shares will promote the public good and is approved pursuant to 30 V.S.A. § 107,

(c) the acquisition by NNEEC and Gaz Métro of indirect controlling interests in the VELCO Companies and in Vermont Yankee Nuclear Power Corporation ("VYNPC") will promote the public good and is approved pursuant to 30 V.S.A. § 107,

(d) the acquisition by Gaz Métro inc., Valener Inc., Noverco, Inc., Caisse de dépôt et placement du Québec, Capital d'Amérique CDPQ Inc., Trencap L.P., Enbridge Inc., and IPL System Inc. of indirect controlling interests in CVPS, VYNPC and the VELCO Companies will promote the public good and is approved pursuant to 30 V.S.A. § 107,

(e) the merger of Danaus Vermont Corp ("Danaus"), a wholly-owned subsidiary of NNEEC, and CVPS with CVPS being the surviving corporation will promote the general good of the state pursuant to 30 V.S.A. § 109(a), will not obstruct or prevent competition in the purchase or sale of any product, service or commodity, and is approved pursuant to 30 V.S.A. § 311,

(f) the subsequent merger of CVPS and Green Mountain Power Corporation ("GMP") with GMP being the surviving corporation will promote the general good of the state pursuant to 30 V.S.A. § 109(a), will not obstruct or prevent competition in the purchase or sale of any product, service or commodity, and is approved pursuant to 30 V.S.A. § 311.

2. The proposed amendment of the articles of association of CVPS, in substantially the form of Exhibit Pet.-Joint-4.2, which shall take effect following the merger of Danaus into and with CVPS, will promote the general good of the state pursuant to 30 V.S.A. § 104.

3. CVPS shall obtain a certificate of consent from the Board pursuant to 30 V.S.A. § 104 certifying that the amendment of the articles of association of CVPS will promote the general good of the state. This certificate shall be filed by CVPS with the Vermont Secretary of State pursuant to 30 V.S.A. § 104.

4. CVPS shall obtain a certificate of consent from the Board pursuant to 30 V.S.A. § 109, certifying that the merger of Danaus with and into CVPS will promote the general good of the state. This certificate shall be filed by CVPS with the Vermont Secretary of State pursuant to 30 V.S.A. § 109.

5. GMP shall obtain a certificate of consent from the Board pursuant to 30 V.S.A. § 109, certifying that the merger of CVPS with and into GMP will promote the general good of the state. This certificate shall be filed by GMP with the Vermont Secretary of State pursuant to 30 V.S.A. § 109.

6. Subject to the conditions set forth herein, the following memoranda of understanding among the parties to this proceeding are approved such that the relevant terms, conditions and obligations of the parties set forth therein shall be deemed to be included and incorporated in this Order:

(a) The Memorandum of Understanding (the "DPS MOU"), dated March 26, 2012, between the Vermont Department of Public Service ("Department") and CVPS, GMP, Gaz Métro, Gaz Métro inc., VLITE, Danaus and NNEEC for itself and as an agent for the parent companies of Gaz Métro (the "Petitioners");

(b) The Memorandum of Understanding, dated April 3, 2012, between the Petitioners, International Business Machines Corporation ("IBM") and the Department;

(c) The Memorandum of Understanding, dated January 19, 2012, between the Petitioners and the City of Rutland;

(d) The Memorandum of Understanding, dated January 13, 2012, between Vermont Electric Cooperative, Inc. ("VEC") and GMP; and

(e) The Memorandum of Understanding, dated March 5, 2012, between the Petitioners and Associated Industries of Vermont.

7. Within five business days after the closing of the acquisition of CVPS by NNEEC and Gaz Métro, NNEEC or CVPS shall provide written notice to the Board and the Department of such closing and of the date it occurred.

8. Within five business days after the closing of the merger of CVPS and GMP, GMP shall provide written notice to the Board and the Department of such closing and of the date it occurred.

9. Within 30 days after the closing of the merger of CVPS and GMP, GMP shall file a map of its service territory (in both a paper document and an electronic format) that reflects the consolidation of the respective service territories of CVPS and GMP.

10. Following the acquisition of CVPS by NNEEC and Gaz Métro, each of CVPS and GMP shall file its monthly financial reports with the Board and the Department, and following the merger of CVPS and GMP, GMP shall continue to file its monthly financial reports with the Board and the Department.

VLITE and VELCO Ownership and Governance

11. Prior to the effective time of the merger of Danaus and CVPS, CVPS shall transfer to VLITE no less than 38 percent of the total of VELCO Class B voting common stock and no less than 31.7 percent of the total of VELCO Class C non-voting common stock.

12. Petitioners shall perform all actions necessary to effectuate the election of the initial members of the VLITE board of directors as directed by the Department prior to the closing of the merger of Danaus and CVPS. The Department shall select all of the initial VLITE directors from among representatives of state government agencies, energy policy interest groups, consumer and low-income advocates, and public power utilities.

13. VLITE shall participate as a shareholder in VELCO for all purposes and shall be entitled to designate members of the board of directors of VELCO pursuant to a voting agreement with other VELCO shareholders, in accordance with technical, governance, public interest, and other criteria designed to select representatives well-qualified to exercise fiduciary duties as members of the board of directors of VELCO to further VELCO's mission.

14. The board of directors of VLITE shall have authority to invest dividends it receives from VELCO in any manner consistent with State policy on energy issues, as set forth in the Comprehensive Energy Plan or as otherwise subsequently designated.

15. Immediately after the closing of the merger of Danaus and CVPS, GMP, CVPS, and VLITE shall enter into a voting agreement requiring each of them to vote all of their VELCO shares in the following manner:

(a) To continue the number of VELCO directors at thirteen;

(b) To vote for the following VELCO directors: four directors as designated by GMP, and three directors as designated by VLITE;

(c) To support the nomination, subject to independence criteria, of two independent directors by those owners of VELCO that are municipal electric distribution utilities or member cooperative electric distribution utilities, including those electric distribution utilities that do not otherwise maintain seats on the VELCO Board. Such director nominees shall be approved by a majority vote of the shareholders of VELCO; and

(d) To continue the other director designations presently in existence as follows: one director designated by the Vermont Public Power Supply Authority ("VPPSA"); one director designated by VEC; one director designated by the City of Burlington Electric Department ("BED"); and a director seat for the president/CEO of VELCO, provided that the president/CEO of VELCO shall not be permitted to serve as Chairman of the VELCO board of directors or as a voting member of its executive committee (however denominated), its audit committee (however denominated), or its executive management compensation committee (however denominated).

16. GMP, CVPS and VLITE shall support amendments to bylaws and any other governing documents to formalize the process for the nomination and election of directors of VELCO, including criteria and standards for the nomination of independent directors, and to provide that VELCO shall be managed as a public utility consistent with the public good of the State of Vermont.

17. GMP, CVPS and VLITE shall advocate for all VELCO shareholders to enter into a Voting Agreement substantially similar to the voting agreement described above and appended to the DPS MOU.

18. GMP, CVPS AND VLITE shall advocate for VELCO to allow all Vermont distribution utilities with ownership interests in VT Transco to participate fully as members of the VELCO Operating Committee.

19. Immediately after the closing of the merger of Danaus and CVPS, GMP, CVPS, NNEEC and Gaz Métro shall take all actions, in a form acceptable to the Department, necessary to assure that none of them individually or collectively can unilaterally remove VELCO as the managing member of VT Transco or eliminate or amend Section 9.3 of the VT Transco Operating Agreement dated November 11, 2008 (amended September 20, 2010), including, without limitation, by any amendment to that agreement.

20. Neither GMP nor CVPS shall increase its ownership share in VELCO in any amount or take any steps that would result in a dilution of VLITE's ownership percentage of VELCO without Board approval.

Guarantee of Customer Savings

21. GMP shall guarantee savings to retail customers from the merger of CVPS and GMP of at least $144 million beginning October 1, 2012, and ending ten years thereafter, which merger savings shall be calculated as provided in the DPS MOU and this Order.

22. As part of its overall obligation to guarantee total merger savings to ratepayers in the nominal amount of at least $144 million, GMP shall provide guaranteed rate benefits to all retail customers in the first three years after the merger of CVPS and GMP, which shall be reflected in base rates as a credit to GMP's base-rate cost of service, in the following aggregate amounts: Year 1 (beginning October 1, 2012) – $2,500,000; Year 2 – $5,000,000; Year 3 – $8,000,000.

23. If the total savings reflected in rates during the ten-year period after the merger are less than $144 million, GMP shall provide the difference to retail customers through a bill credit under a plan, which shall include a proposed methodology and schedule for implementation, that shall

be filed with the Board no later than December 31, 2022, and that shall be subject to the Board's approval.

<u>Tariff Integration Process</u>

24. From the closing of the merger of CVPS and GMP until rate integration is accomplished, GMP's customers shall be separated into two categories: customers in the former GMP service territory who shall be served on the then-current GMP tariff rates, and customers in the former CVPS service territory who shall be served on tariff rates identical to the then-current CVPS tariff rates.

25. CVPS and GMP general residential tariffs shall be integrated with such integration to take effect on October 1, 2013.

26. All other GMP and CVPS tariffs shall be integrated after the Board has approved a new fully allocated rate design for all customer classes.

27. GMP shall file annual costs of service as provided for under the Alternative Regulation Plan ("Alt Reg Plan") of GMP for rates to be effective prior to October 1, 2014.

28. There shall be a traditional cost-of-service review proceeding (which shall not affect the accounts identified in Attachment III to the DPS MOU ("Base O&M Costs")) for rates effective on or after October 1, 2014. This traditional cost-of-service review shall consist of a test year adjusted for known and measurable changes; it shall not include adjustments otherwise permitted to be made under alternative regulation such as forecasted billing determinants and forecasted rate base.

29. This traditional cost-of-service review shall be the basis for GMP's revised rate design filing that shall be filed no later than October 15, 2014.

30. GMP shall not oppose the intervention by and full participation of any affected customer in the rate design proceeding.

31. GMP and the Department shall use all reasonable efforts to ensure that the rate design proceeding is completed within nine months of the date of the filing of a revised rate design with the Board.

32. The proposed rate design shall be based in part on data from GMP's smart meters.

33. GMP shall continue to serve IBM on its current Commercial & Industrial Transmission Service Rate and maintain the existence of this rate class, subject to duly authorized rate adjustments and subject to approval by the Board of a new rate design.

34. As part of the rate design proceeding, GMP shall account for the differences in costs associated with serving load at the distribution and transmission levels, and shall also account for the differences in costs associated with the particular voltage levels at which transmission service is provided.

Alternative Regulation Plans

35. GMP shall file a base-rate adjustment for both CVPS and GMP on August 1, 2012, to be effective on October 1, 2012. The percentage change in rates resulting from the base-rate adjustment shall be applied to all GMP and CVPS tariffs, except that the percentage change applicable to the GMP Commercial & Industrial Transmission Class shall be modified to reflect the provisions of GMP's Alt Reg Plan applicable to rate adjustments for that rate class. The base-rate adjustment, effective October 1, 2012, shall be based on a calendar 2011 test year, adjusted to the base-rate year beginning October 1, 2012, and based on traditional ratemaking principles as modified by GMP's Alt Reg Plan, except that no adjustments due to the merger of CVPS and GMP shall be made to Base O&M Costs.

36. GMP shall provide all parties to this proceeding with a copy of GMP's August 1, 2012, base-rate adjustment filing. Any party to this proceeding may, as part of the review of the August 1, 2012, base-rate adjustment filing, comment on the proposed Base O&M Costs, and may request a Board investigation under the Alt Reg Plan of GMP. Any party to this proceeding that wishes to file comments on the August 1, 2012, base-rate filing shall do so on or before August 22, 2012.

37. The power adjustors and Earnings Sharing Adjustment Mechanism ("ESAM") adjustments under GMP's Alt Reg Plan and CVPS's Alt Reg Plan applicable to the period prior to October 1, 2012, shall be separately calculated and charged or credited to the respective customers in each legacy service territory. The power adjustors and ESAM adjustments under GMP's Alt

Reg Plan for the period beginning October 1, 2012, shall be calculated and charged or credited to all customers.

Sharing of Merger Savings with GMP

38. For the first eight years following the merger of CVPS and GMP, GMP shall share in Operations and Maintenance ("O&M") cost savings resulting from such merger rather than reflecting all such cost savings in rates based on actual O&M costs.

39. For each of the first three years following the merger of CVPS and GMP, GMP shall receive any applicable O&M cost savings resulting from the merger for such year after it credits its base-rate cost of service with the amount of annual guaranteed savings due to its customers for that year.

40. In years 4 to 8 following the merger of CVPS and GMP, GMP and its customers shall each receive 50 percent of the benefit of applicable O&M cost savings resulting from such merger.

41. The shared savings proposal shall be implemented through a base-rate adjustment under GMP's Alt Reg Plan.

42. Base O&M Costs shall exclude all savings and costs incurred by CVPS or GMP related to the deployment of Smart Grid and Advanced Meter Infrastructure, the Kingdom Community Wind Project (Docket 7628), CVPS's acquisition of the assets of the Vermont Marble Power Division of Omya, Inc. (Docket 7660), and CVPS staff reductions associated with the Docket 7496 MOU, which shall all be reflected in rates consistent with traditional ratemaking principles.

43. Base O&M Costs shall be subject to change in each future base-rate adjustment in which merger savings are shared to reflect the change in the Consumer Price Index for All Urban Consumers (CPI-U) Northeast Region, any Exogenous Costs and the impact of the Non-Power Cost Cap as defined in GMP's Alt Reg Plan, and any further changes agreed upon by GMP and the Department and approved by the Board.

44. GMP's base-rate cost of service in Years 4 to 8 after the merger shall be credited in the following amounts: Year 4 – $10.5 million; Year 5 – $12.0 million; Year 6 – $13.0 million; Year 7 – $14.0 million; Year 8 – $14.5 million.

45. Annual merger savings for purposes of the shared savings proposal shall be equal to the difference for any year between (i) Base O&M Costs, as adjusted, and (ii) actual O&M costs, which shall be determined with reference to the same accounts used to determine Base O&M Costs after similarly excluding all savings and costs related to Smart Grid and Advanced Meter Infrastructure, the Kingdom Community Wind Project, CVPS's acquisition of VMPD assets and staffing reductions associated with the Docket 7496 MOU ("Actual O&M Costs").

46. To the extent there is a difference between (i) 50 percent of the annual merger savings in Years 4 to 8 and (ii) the amounts credited to GMP's base-rate cost of service in Years 4 to 8, an appropriate billing adjustment shall be made when the next ESAM is implemented.

47. Beginning in the ninth year following the merger of CVPS and GMP and continuing thereafter, all O&M cost savings related to the merger shall flow to customers and O&M costs included in base-rate adjustments shall be based on actual costs, traditional ratemaking principles and the terms of any Alt Reg Plan then in effect for GMP.

48. No later than July 1, 2012, GMP shall file with the Board and provide to the parties in this docket a template for reporting merger-related savings and a procedure for review and verification.

49. GMP shall file an annual report of merger-related savings for at least ten years after the merger.

<u>CEED Fund as Windfall-Recovery Mechanism</u>

50. The Community Energy & Efficiency Development Fund ("CEED Fund"), as proposed in the DPS MOU and subject to the additional conditions set forth in this Order, is an acceptable mechanism for satisfying the windfall-recovery provisions set forth in Dockets 6460/6120.

51. The CEED Fund shall be capitalized with an amount equal to the windfall-recovery amount established in Dockets 6460/6120 and adjusted for inflation as provided in Attachment II to the DPS MOU.

52. GMP shall be required to provide net customer benefits equal to or greater than 1.2 times the required investment, with interest accruing at the rate of inflation on uninvested amounts until the required investment has been made.

53. Net benefits for approved CEED Fund projects shall be calculated by deducting aggregate costs from aggregate benefits. Aggregate costs include CEED Fund investments, participating customer investments, and costs associated with project delivery mechanisms, performance monitoring (including DPS audits), benefits measurement and reporting, and any other administrative costs charged under contract relating to CEED Fund investments. Aggregate benefits from CEED Fund investments may include, among other things, energy and capacity savings, avoided investments in infrastructure, reduced supply risk resulting from fossil fuel and geographic diversity, comparative savings when compared with similar technologies, environmental benefits (emission reductions), economic development benefits and other customer savings (water, fossil fuel) as applicable.

54. Each project funded by the CEED Fund shall meet a "but for" test demonstrating that the project would not have been undertaken or would not have received incremental funding in the amount provided by the CEED Fund in the absence of the CEED Fund investment.

55. GMP, through the CEED Fund, shall invest $6 million in Vermont's Weatherization Program before December 1, 2012, and at least an additional $4 million in Vermont's Weatherization Program before December 1, 2013.

56. GMP, through the CEED Fund, shall also invest before December 1, 2013, at least $2 million in thermal efficiency improvements for customers who do not qualify for Vermont's Weatherization Program.

57. Investments in Vermont's Weatherization Program and in other thermal-efficiency improvements delivered by December 1, 2013, shall be deemed to have a net customer benefit of 1.2 times the amount of the investment for purposes of satisfying the CEED Fund's net benefit requirement.

58. The specific manner in which thermal-efficiency investments will be made for, and services provided to, customers who do not qualify for Vermont's Weatherization Program shall be discussed in a stakeholder process and shall be submitted to the Board for approval. GMP shall be required to demonstrate in its submission to the Board, that the proposed investments will produce electric savings.

59. The remainder of the CEED Fund shall be invested in projects reviewed in a stakeholder process, which shall consist of recurring scheduled meetings, open to all interested parties and designed to inform the decision-making regarding allocation of the monies. Based on information provided in the stakeholder process, and consistent with the need to provide sufficient net benefits to customers, GMP shall select projects to file with the Board for approval. GMP shall describe in detail in the filing the projected investment and estimated net benefit amount, the delivery mechanism, and the plan for performance monitoring (including DPS audits), benefits measurement and reporting.

60. GMP's investment in each CEED Fund project shall be amortized over 10 years and the unrecovered amount may be included in rate base.

61. GMP may hire subcontractors where appropriate to manage implementation of CEED Fund programs as provided in Attachment II to the DPS MOU.

62. All weatherization projects and other investments funded through the CEED Fund shall take place within the existing CVPS service territory and must benefit GMP's customers who are located in the former CVPS service territory.

63. GMP shall provide the required benefit amount to customers within seven years after the entry of this Order. If, at the end of that time period, GMP has not provided the full required net benefit to customers, GMP shall file, within 90 days thereafter, a plan for Board approval specifying how the remaining benefits will be delivered. If, at the end of that time period, GMP has not made the required investment, any shortfall will be provided to former CVPS customers on a uniform percentage basis in the form of a bill refund.

64. If GMP provides bill refunds to customers because GMP has not made the required investments of CEED Fund monies within seven years after the entry of this Order, the aggregate amount of such bill refunds shall not be recoverable in rates.

65. If any additional investments in excess of the required investment are needed to deliver the required net benefits to customers in CVPS's existing service territory, such additional investments shall be made but shall not be recoverable in rates.

66. By November 15 of each year, GMP shall submit an annual plan to the Board for its review describing each proposed project, the projected investment, the requested benefit and cost

calculation methodology, the net benefit amounts expected from adoption of such benefit and cost calculation methodology, and the delivery mechanism. At the same time, GMP shall submit an annual report that includes previous amounts invested by year, the net benefit results by year net of any performance monitoring adjustments, if applicable, and the expected amount of remaining net benefits due customers on December 31 of the year of submittal. The annual report will also identify estimated inflation growth on uninvested amounts expected through December 31 of the year in which it submits such annual plan.

67. CEED Fund investments shall be made in approximate proportion to the relative share of load of existing retail customer classes of CVPS, with the intention of achieving net benefits in approximate proportion as well.

68. An independent review of the CEED Fund shall be undertaken after the third year of the CEED Fund's operation to evaluate its performance and suggest improvements to program design or execution.

Service Quality and Reliability

69. By July 1, 2013, GMP shall file with the Board and the Department a proposed integrated Service Quality and Reliability Performance, Monitoring and Reporting Plan ("Service Quality Plan"), consistent with the terms of the DPS MOU. This integrated Service Quality Plan shall include a baseline for customer outage duration that shall be at least 10 percent better than the baseline that would have resulted from simply blending the baselines in CVPS's and GMP's current Service Quality Plans.

70. After the merger of GMP and CVPS and before the integrated Service Quality becomes effective, GMP shall continue to file reports required by GMP's current Service Quality Plan for GMP's legacy service territory, and GMP shall file reports required by CVPS's current Service Quality Plan for CVPS's legacy service territory.

Financial Integrity Measures

71. GMP shall remain structurally separate from its affiliates and shall be operated as a stand-alone company. If GMP seeks to change from operating in this manner, GMP and/or NNEEC shall seek prior approval from the Board.

72. GMP shall continue to exist as a separate corporation and shall maintain a complete set of financial books, records and reports separate from NNEEC, Vermont Gas, or Gaz Métro. If GMP seeks to change from operating in this manner, GMP and NNEEC shall seek prior approval from the Board.

73. GMP shall maintain separate bank accounts from its affiliates and shall not commingle GMP funds with funds of affiliates.

74. The following standards shall be applicable to transactions with GMP's affiliates:

(a) GMP shall provide to the Board and the Department written notice of, and shall file copies upon request, of all contracts with affiliates of $100,000 or more;

(b) Transactions of $100,000 or more between GMP and its affiliates shall be effected through arms-length contracts that are amenable to competitive comparison and evaluation;

(c) GMP shall record transactions with affiliates based on the actual cost of the product or service underlying such transactions, except that transactions for which there is a readily-available market price shall be recorded at fair market value or actual cost, whichever is more beneficial for GMP's ratepayers;

(d) GMP transactions with affiliates shall be documented by invoice or other documentation describing the service or product underlying the transaction and including support for the amount of payment. GMP shall report these affiliate transactions on an annual basis in a report to the Department and the Board; and

(e) GMP shall not make loans to any affiliated company that is not also rate regulated under a United States or Canadian jurisdictional authority. For any loans between GMP and affiliates that are subject to Canadian rate regulation, GMP shall seek Board approval before any loans are written.

75. The following standards shall be applied to distributions and transfers between GMP and its affiliates:

(a) Distributions or transfers of assets and liabilities in excess of $100,000, from GMP to NNEEC or other affiliates must be approved in a documented vote by GMP's board of directors;

(b) Distributions and transfers of assets and liabilities from GMP to NNEEC or other affiliates shall comply with Vermont law and with GMP's articles of incorporation and bylaws; and

(c) GMP shall provide 30 days' advance written notice to the Board and the DPS if (1) any planned transaction or distribution would result in the equity portion of the capital structure of GMP varying by more than three percentage points from the structure approved in GMP's latest rate proceeding, or (2) GMP's unused, short-term borrowing capacity falls below $25 million, or (3) GMP makes distributions to NNEEC or other affiliates after GMP has been placed on Credit Watch with negative implications if GMP's credit rating is below BBB (S&P) or Baal (Moody's). If advance notice is not reasonably possible, GMP shall give such notice as soon as practicable.

76. GMP shall conduct its business affairs in a manner that prevents subsidization of affiliates by GMP.

77. GMP shall not make any distribution to its parent or to any affiliates that would cause GMP's equity capital to fall below 45 percent of GMP's total capitalization without first obtaining Board approval, except to the extent that the Board imputes a lower equity percentage for ratemaking purposes. The Board may reexamine this minimum common equity percentage as financial conditions change, and may determine that it be adjusted.

78. GMP shall provide the Board and the Department access to all written information which pertains to GMP, including electronically-stored documents, that is provided by Gaz Métro, NNEEC, or NNEEC subsidiaries to bondholders or credit rating analysts. Such information includes, but is not limited to, reports provided to, and presentations made to bondholders and credit-rating analysts.

79. GMP shall notify the Board and Department in writing of:

(a) Its intention to transfer an amount that is more than 10 percent of GMP's total stockholder equity to its parent or affiliates (or any combination thereof) over a 12-month period, at least 60 days before such a transfer begins;

(b) Its intention to declare a special cash dividend from GMP, at least 30 days before declaring each such dividend;

(c) All regular common stock cash dividends from GMP within 10 days after declaring each such dividend; and

(d) Its intention to make a loan to an affiliate 30 days before making such a loan.

80. GMP shall notify the Board and the Department in writing prior to any transfer, sale, lease, encumbrance, or other disposition of GMP's utility property that is not otherwise subject to Board approval and that (1) has a net book value in excess of $5,000,000 which is included in Vermont rate base, and (2) has costs recovered through rates regulated by the Board.

81. The proceeds of any new financing that are secured by GMP assets which either (1) are included in Vermont rate base, or (2) have costs recovered through rates regulated by the Board, must be used for utility purposes.

82. Nothing in this Order shall be deemed to restrict the Department, consistent with its existing regulatory authority, from initiating an investigation on any of the cost allocations or affiliate provisions contained in, or filings required by the DPS MOU or this Order.

83. For the period between the closing of the merger of Danaus and CVPS and the closing of the merger of CVPS and GMP:

(a) CVPS shall maintain separate debt instruments and maintain its own corporate and debt credit rating, as well as a rating for long-term debt;

(b) CVPS shall not declare or pay any dividends on its capital stock if such dividends would result in a capital structure that would reduce the percentage of equity below the percentage reflected in the capital structure in CVPS's most recent forecasted capitalization to the Board;

(c) CVPS shall not lend to, guarantee, or financially support its parent or affiliates, or any subsidiary or joint venture of CVPS;

(d) CVPS shall maintain books and records and banking and cash management arrangements separate from affiliates;

(e) CVPS shall not enter into transactions with affiliates on terms less favorable to CVPS than those available from third parties on an arms-length basis.

Employment

84. GMP shall not achieve any O&M cost savings related to the merger of CVPS and GMP through layoffs of employees (other than executive officers) or mandatory relocations.

City of Rutland

85. GMP shall seek to maintain proportional levels of its employee base headquartered in the Rutland area. The base figure will be determined by calculating the percentage of Rutland-area

jobs in the merged company on the effective date of the merger of CVPS and GMP. GMP shall report in writing to the City of Rutland ("Rutland"), the Board and the Department on the employment levels five, eight, and ten years after the effective date of such merger.

86. GMP's Headquarters for Operations and its Energy Innovation Center shall be located in the City of Rutland or the Town of Rutland. The Headquarters for Operations shall direct activities consistent with, but not limited to, operations currently conducted out of CVPS's Post Road facility. The Energy Innovation Center shall be designed to serve as a catalyst for innovative programs related to renewable energy, efficiency, customer service options, smart grid technology, and new product offerings.

87. Following a collaborative, stakeholder-based engagement process with Rutland community leadership, GMP shall identify a suitable and appropriate site in downtown Rutland for construction or redevelopment of a new GMP facility. GMP shall work with local leaders on a plan to repurpose existing CVPS facilities.

88. GMP shall establish a solar city program in Rutland County which is intended to cause the Rutland area to become the leading solar generation center in Vermont.

89. GMP shall create and fund a $100,000 "Open for Business" fund to be administered by the Downtown Rutland Partnership, and a $100,000 "Green Growth" fund to be administered by the Rutland Economic Development Corporation.

Irasburg-East Fairfax Transmission Facilities

90. GMP and VEC shall seek to negotiate an agreement by July 15, 2012, for the ownership and operation of the of the Irasburg-East Fairfax Transmission Facilities.

91. GMP and VEC shall consider all viable models for ownership and operation, prioritizing those models that best serve the interests of the customers served by the Irasburg-East Fairfax Transmission Facilities, including customers of the Village of Hyde Park Electric Department ("Hyde Park") and the Village of Johnson Water & Light Department, from the perspective of reliability, serviceability and cost.

Joint Ownership of Highgate Transmission Interconnection

92. CVPS and GMP shall seek to amend, and shall work with the other joint owners of the Highgate Transmission Facility to amend, the Agreement for Joint Ownership, Construction and Operation of the Highgate Interconnection Agreement to provide that any action requires the affirmative vote of at least three owners representing a majority of the ownership shares in the Highgate transmission interconnection project.

CVPS-Hyde Park 3-Phase Service Agreement

93. GMP shall negotiate in good faith with VPPSA to address issues related to the termination of the CVPS-Hyde Park 3-Phase Service Agreement and to request Board approval to terminate such agreement upon the merger of CVPS and GMP.

Other Agreements between CVPS or GMP and Members of the VPPSA

94. The agreements, understandings and procedures existing between members of VPPSA and CVPS or GMP shall remain in effect upon the merger of CVPS and GMP, and none of these agreements, understandings and procedures shall be changed or terminated without notice and an opportunity to negotiate in good faith.

Dated at Montpelier, Vermont, this 15th day of June 2012.

s/ James Volz	)	
	)	PUBLIC SERVICE
	)	
s/ David C. Coen	)	BOARD
	)	
	)	OF VERMONT
s/ John D. Burke	)	

OFFICE OF THE CLERK

FILED: June 15, 2012

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.

Appendix A: Appearances

Donald J. Rendall, Jr., Esq.
Mari M. McClure, Esq.
for Green Mountain Power Corporation

Peter H. Zamore, Esq.
Benjamin Marks, Esq.
Charlotte B. Ancel, Esq.
Sheehey Furlong & Behm P.C.
for Green Mountain Power Corporation and the other Petitioners except for Central Vermont Public Service Corporation

Dale A. Rocheleau, Esq.
for Central Vermont Public Service Corporation

John H. Marshall, Esq.
Kimberly K. Hayden, Esq.
Lisa A. Fearon, Esq.
Downs Rachlin Martin PLLC
for Central Vermont Public Service Corporation

John Beling, Esq.
Geoffrey Commons, Esq.
for Vermont Department of Public Service

James A. Dumont, Esq.
for AARP

Leslie A. Cadwell, Esq.
Gravel and Shea PC
for Ampersand Gilman Energy LLC and affiliates

William Driscoll
for Associated Industries of Vermont

Caroline S. Earle, Esq.
Law Office of Caroline S. Earle, PLC
for International Brotherhood of Electrical Workers, Local Union 300

William F. Ellis, Esq.
McNeil, Leddy & Sheahan, P.C.
for City of Burlington Electric Department

Andrew G. Costello, Esq.
for City of Rutland

Vincent Illuzzi, Esq.
for Group of 46 Ratepayers

Leonard H. Singer, Esq.
Adam T. Conway, Esq.
Couch White, LLP
for International Business Machines Corporation

Edward V. Schwiebert, Esq.
David R. Cooper, Esq.
Kenlan, Schwiebert, Facey & Goss, P.C.
for Omya, Inc.

Gabrielle Stebbins
for Renewable Energy Vermont

Jeremy D. Hoff, Esq.
Edward B. French, Esq.
Stackpole & French Law Offices
for Town of Stowe Electric Department

Victoria J. Brown, Esq.
for Vermont Electric Cooperative, Inc.

Karen K. O'Neill, Esq.
for Vermont Electric Power Company, Inc., Vermont Transco LLC, and Vermont Electric Transmission Company, Inc.

Paul Burns
Ben Walsh
for Vermont Public Interest Research Group

William B. Piper, Esq.
Katherine Amestoy, Esq.
Primmer Piper Eggleston & Cramer, PC
for Vermont Public Power Supply Authority

Parker M. Riehle
for Vermont Ski Areas Association,

Joshua R. Diamond, Esq.
Diamond & Robinson, P.C.
for Washington Electric Cooperative, Inc.