

First, the Ratepayers are incorrect that the Administration has announced support for the Petitioner's proposal. In his June 23, 2011 public statement, the governor commented on several goals for the sale of Vermont utilities, which are that the transaction is good for ratepayers, that the transmission infrastructure be modernized and that it will lead to greater use of renewables. He further stated that the Department would "review this proposal carefully ... [and] they and the Public Service Board will determine the outcome of the regulatory process." As the Governor's own statements make crystal clear, his comments cannot reasonably be viewed as support for the detailed proposal ultimately submitted to the Board nor as a determination not to thoroughly evaluate that proposal.

Second, the Ratepayers have not identified any Board precedent or other support for the proposition that the fact the Administration has commented on public announcements concerning the transaction provides a basis for intervention. This Board has rejected intervention requests based on a claim that the Department's alleged position renders it incapable of performing its statutory duties.³ In rejecting an intervention request based on claims that "the DPS has hired consultants on the basis of 'political and personal favors,'" for instance, the Board stated that "[i]t is the Board's duty to resolve disputes on the basis of evidence presented; it is not the province of the Board to judge the competence of the DPS to prosecute the case." *Investigation into Town of Hardwick Electric Department's proposed rate design tariff*, Docket No. 5469 (Vt. Pub. Serv. Bd. Oct. 3, 1991). In another case the Board further stated:

Vermont statutes make it clear that the Department is expected to take and advocate explicit positions upon difficult policy questions. Doing so will inevitably lead to disputes about the merits of its choices. Experience persuades us that it will be more productive for the Board to resolve those disputes by considering the evidence in specific cases ...

Tariff Filing of Green Mountain Power Corp., Docket No. 5532 (Vt. Pub. Serv. Bd. (Oct. 22, 1991) at 3 (rejection of intervention request based on criticisms of "the internal decision-making process of the Department").

Third, the intervention is based on an incorrect assumption that "no party, including the Department of Public Service, will substantially oppose the proposal." Motion at 4. Yet the

³ The related claim that the Department is subject to a conflict of interest will be addressed in the Petitioners' Opposition to Appointment of Independent Counsel.

interests identified by the Ratepayers (e.g., VELCO control) are also identified as grounds for the intervention requests for many of the other proposed intervenors, as demonstrated below.

Fourth, the Ratepayers fail to demonstrate how they meet the standards for intervention. Under the Board's implementation of Rule 2.209(B), these standards include a requirement that the movant demonstrate a "particularized interest" that will be affected by the proposal. *Joint Petition of Green Mountain Power Corp., etc.*, Docket No. 7428 (Vt. Pub. Serv. Bd. Sept. 3, 2010) at 3.⁴ In that case, the Board stated that a property owner's concerns as to health or economic impacts that equally affect the movant and the public at large, for instance, fail to meet this test. *Id.* at 4, 5. With respect to intervention requests by ratepayer groups, the Board has applied a similar analysis. Where such groups are allowed to intervene, it is typically based on a determination that the individual ratepayer interests are sufficiently distinct from the general public interest that they cannot be adequately represented by the Department. For instance, the Board granted intervention to a group of residential ratepayers because the Department represents all ratepayers whereas the ratepayer group proposed to raise issues that the Department did not intend to address. *Investigation of tariff filing of Washington Electric Cooperative, Inc.*, Docket No. 5049 (Vt. Pub. Serv. Bd. Oct. 30, 1985). *See also In re Vermont Public Power Supply Authority*, 140 Vt. 424 (1981) (reverse Board denial of intervention of seven municipal utility ratepayers concerning proposed utility debt, finding that their interests may not be identical to the interests of the public or the State).

In this case, the Ratepayers have not identified how their interests as residential ratepayers entitle them to intervene, where the proceeding relates to a utility merger rather than a rate case and the identified interest relates to VELCO control of the transmission system, rather than electric rates or service quality. Simply put, control of the transmission system affects all retail ratepayers similarly. It is the type of generalized interest that the Department is charged to protect and that therefore is insufficient to justify intervention. If the Ratepayers were entitled to intervene on this basis, the Board would be required to permit intervention by a limitless number

⁴ The Ratepayers incorrectly claim an entitlement to intervention of right based on 30 V.S.A. § 208 and the bare statement that they have a "vested right" to participate in the proceeding. Petition at 4. Section 208 merely permits a group of ratepayers to request an investigation; it does not create any right to intervene. Although *In re Vermont Public Power Supply Authority*, 140 Vt. 424, 432 (1981) refers to Section 208 in its analysis of intervention, the primary basis for its conclusion relates to the potential for the proceeding to have significant impacts on electric rates.

of ratepayer groups on a limitless number of generalized interests, thereby turning the carefully crafted standards for intervention on their head.

Finally, the General Assembly has delegated to the Department within the Executive branch of state government the responsibility to make policy decisions as to the public interest of the state. The Ratepayers' intervention reflects a requested exercise of authority that has been delegated to the Department. Their request fails to make a *prima facie* showing as to why their intervention is necessary.

For these reasons, the Ratepayers' intervention request should be denied.

With respect to the intervention requests that the Petitioners do not oppose, the scope of the interventions should be limited to the interests identified in the various motions, generally described as follows:⁵

1. Utilities

- a. BED: impact of proposal on power purchase agreements ("PPAs") and on transmission agreements with GMP or CVPS;
- b. SED: impact of proposal on PPAs with GMP or CVPS, on VELCO service, and on low income rates;
- c. VEC: impact of proposal on agreements with CVPS, on service to VEC,⁶ and on VELCO ownership and governance;
- d. VELCO: impact of proposal on VELCO ownership and governance;
- e. VPPSA: impact of proposal on transmission agreements with GMP or CVPS, on facilities jointly-owned with GMP or CVPS, and the VLITE proposal; and
- f. WEC: impact of proposal on agreements with GMP or CVPS, on VELCO ownership and governance, and on transmission service.

2. Customers

- a. Ampersand: impact of proposal on a PPA with CVPS, on transmission service to Ampersand, on electric service provided to Ampersand, and the so-called windfall sharing mechanism ("WSM");

⁵ Although AARP is a party and the Petitioners previously stated they do not oppose the interventions of Omya and IBM, it is important that the scope of their interventions be established to assure that this proceeding can be managed in an efficient manner.

In the event the Ratepayers are permitted to intervene, the scope of their intervention should be limited to their claimed interest in VELCO control.


⁶ Petitioners do not believe, however, that the docket's scope should include the value, maintenance, operation and reliability of transmission and distribution equipment.

- b. IBM: impact of proposal electric service provided to IBM; and
 - c. Omya: impact of proposal on electric service provided to Omya;
3. Other Entities
- a. AARP: the WSM and impact of the proposal on low income rates;⁷
 - b. Rutland: impact of proposal on Rutland, including the headquarters building and location of jobs; and
 - c. VSAA: impact of proposal on electric service provided to VSAA members.

Dated at Burlington Vermont, this 21st day of October 2011.

CENTRAL VERMONT PUBLIC SERVICE CORPORATION, NORTHERN NEW ENGLAND ENERGY CORPORATION, for itself and as agent for Gaz Métro Limited Partnership's parents, GAZ MÉTRO LIMITED PARTNERSHIP, GAZ MÉTRO INC., DANAUS VERMONT CORP., GREEN MOUNTAIN POWER CORPORATION and VERMONT LOW INCOME TRUST FOR ELECTRICITY, INC.

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⁷ Although AARP did not identify low income rates in its Motion to Intervene, the Petitioners do not oppose intervention on this issue given AARP's long-standing involvement in low income rate issues.