VERMONT

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December 17, 2015

Mrs. Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street
Montpelier, Vermont 05620

Re: Docket 7970-VGS System Expansion

Dear Mrs. Hudson:

Attached for filing with the Board are an original and eight copies of the Brief of the Vermont Department of Public Service on Whether to Supplement the Evidentiary Record in the Second Remand Proceeding. Please call if you have any questions.

Sincerely,

Louise C Porter

Louise C. Porter
Special Counsel

cc: Service List

PSB Docket Nos. 7970 - SERVICE LIST

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STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7970

Petition of Vermont Gas Systems, Inc. for a certificate of public good, pursuant to 30 V.S.A. § 248, authorizing the construction of the "Addison Natural Gas Project" consisting of approximately 43 miles of new natural gas transmission pipeline in Chittenden and Addison Counties, approximately 5 miles of new distribution mainlines in Addison County, together with three new gate stations in Williston, New Haven and Middlebury, Vermont (On Remand Two)

BRIEF OF THE VERMONT DEPARTMENT OF PUBLIC SERVICE ON WHETHER TO SUPPLEMENT THE EVIDENTIARY RECORD IN THE SECOND REMAND PROCEEDING

I. Introduction

On October 7, 2015, Vermont Gas Systems, Inc. ("VGS" or "Vermont Gas") submitted to the Public Service Board a Memorandum of Understanding ("MOU") entered into with the Department of Public Service (the "Department"). On that same date, the Department filed a letter in support of the MOU from Commissioner Christopher Recchia (the "Recchia Letter"). The Board convened a status conference on October 15, 2015, following which VGS filed a Motion to Admit the MOU into the Evidentiary Record (the "VGS Motion").

On November 2, 2015, the Board issued a Procedural Order Re: Supplemental Evidentiary Hearing (the "Procedural Order") establishing a schedule "for further process to resolve several pending motions to reopen and supplement the evidentiary record for this second remand proceeding." [1] The Board did not rule on the VGS Motion, but rather provided that it

[1] In addition to the VGS Motion, the Board has a motion pending before it from AARP, joined by Kristin Lyons, to admit into the evidentiary record certain documents relating to civil lawsuits between VGS and Over and Under Piping Contractors, Inc. (the "Over and Under Documents"). There were no objections to the admission of the Over and Under Documents by any of the parties.

would do so following an evidentiary hearing and briefing. The Board also provided this additional guidance: "the scope of this hearing will be to examine the nature, relevance, and materiality of the MOU as it relates to the record of (1) the First Remand hearings of September 2014 and subsequent briefing, and (2) the Second Remand hearings of June 2015 and subsequent briefing." Procedural Order at 4.

Testimony was submitted on behalf of VGS and the Department, and discovery was conducted thereon. Testimony was also submitted by AARP and the Palmers. The Board convened a technical hearing on December 1 and December 9, 2015 (the "Technical Hearings"). During the course of the Technical Hearings, the Board admitted the MOU into the evidentiary record.[2]

The MOU was entered into to limit ratepayer exposure to increasing capital cost projections for the Addison Natural Gas Project (the "Project") and to resolve the continuing uncertainty which is a result of the lack of a resolution of this proceeding. This lack of certainty as to whether VGS has a valid, final CPG is threatening completion of the Project on time and on budget. The MOU provides a rate cap, subject to certain exceptions (the "Rate Cap"), on Project costs which are potentially recoverable from ratepayers. Per the terms of the MOU, this Rate Cap will take effect so long as the Board resolves the pending Rule 60(b) motions on or before January 8, 2016.

The issues currently before the Board are whether or not to admit the Over and Under Documents and "whether and how the MOU might relate to … [the Board's] ultimate ruling on the pending Rule 60(b) motions in the Second Remand." Procedural Order at 4. Given that no objections were raised to the admission of the Over and Under Documents and in light of the Board's broad discretion with respect to the admission of evidence, the Board should admit them. With respect to the relationship of the MOU to the resolution of the pending Rule 60(b) motions, the Board should consider the positive effect that the MOU will likely have on future rates as it determines whether or not to grant any of the pending motions to reopen the final order

[2] The MOU was attached to the November 6, 2015 prefiled testimony of Donald J. Rendall, Jr., which testimony was admitted into the record. Tr. 12/1/15 at 16 (Volz) and 12/9/15 at 6 (Volz).

granting the CPG.

Rate impacts and the potential for impermissible cross-subsidies have been at issue throughout this proceeding. These matters have been considered by the Board under the Section 248(a) general good criterion. The cap on rate recovery of Project costs imposed by the MOU will likely reduce the rate impacts and will likewise reduce the extent of any cross-subsidy.

As the Department has previously argued, the weight of the evidence continues to demonstrate that the Project meets the criteria of Section 248. The impacts occasioned by the MOU are beneficial and positive, albeit quantitatively imprecise, and no party has identified a negative impact. The Board should consider all of the record evidence-including the MOU-and deny all of the pending Rule 60(b) motions on or before January 8, 2016 for the reasons previously advanced by the Department and set forth herein. Denial of the pending motions by that date will ensure that the MOU remains in effect, for the benefit of Vermont Gas ratepayers.

II. Background and Procedural History

On December 23, 2013, the Board issued an order (the "December 23 Order") and CPG to VGS pursuant to 30 V.S.A. § 248 to construct the Project. In April 2014, Ms. Kristin Lyons ("Lyons"), a landowner affected by a change in the alignment of the Project imposed by the Board in the December 23 Order, appealed to the Vermont Supreme Court.

On July 2, 2014, VGS provided notice to the Board of an increase in estimated capital costs (the "First VGS Cost Update"). The Board sought a remand of the case from the Supreme Court to determine whether or not to reopen the proceeding (the "First Remand"). In an Order issued October 10, 2014, the Board concluded that it would not reopen the proceeding and returned the matter to the Supreme Court to conclude the appeal.

On December 19, 2014, Vermont Gas provided notice of a second increase in estimated capital costs (the "Second VGS Cost Update"). On December 23, 2014, the Department, pursuant to Rule 60(b) of the Vermont Rules of Civil Procedure ("VRCP"), requested that the Board establish a process whereby the Board could evaluate and address the Second VGS Cost Update.

On January 23, 2015, the Board filed a motion for a second remand with the Vermont Supreme Court (the "Second Remand"). On March 25, 2015, the Board issued a Procedural Order Re: Second Remand, in which it set a schedule and established that the threshold question on remand would be to determine whether to reopen the December 23 Order or not.

Technical hearings were convened on June 22 and 23, 2015. Briefs and reply briefs were filed on July 8 and August 10, 2015, respectively.

In late September 2015, VGS and the Department began negotiating the MOU amid concerns that continuing regulatory uncertainty was placing the Project's budget and schedule, and perhaps completion of the Project itself, in jeopardy.

The MOU was filed on October 7, 2015, followed by the submission of the VGS Motion on October 15, 2015. On November 2, 2015, the Board issued the Procedural Order which provided a schedule and scope for the present proceeding.

Prefiled testimony was submitted on behalf of Vermont Gas, the Department, the Palmers, and AARP.

The Technical Hearings were convened, at which the Board heard evidence regarding the VGS Motion and the relevance of the MOU to the resolution of the pending Rule 60(b) motions.[3] Appearances were entered by Vermont Gas, the Department, the Palmers, Conservation Law Foundation ("CLF"), AARP, the Vermont Fuel Dealers Association ("VFDA"), and Lyons.

III. Findings of Fact

1. The MOU establishes a cap on the Project costs that ratepayers are potentially exposed to. The MOU also informs the Board of the real-world impact this proceeding is having on the Project and Project costs. Christopher Recchia, DPS ("Recchia") pf. at 3-4.

2. The economic benefit of the Project and discussions of the general good of the State (in particular, with respect to the cross-subsidy between current and future ratepayers) are

[3] The admissibility of the Over and Under Documents was within the scope of the Procedural Order, but no evidence was offered on this issue.

both directly impacted by the projected ratepayer impacts of the Project. Asa S. Hopkins, DPS ("Hopkins") pf. at 3.

3. The Rate Cap set forth in the MOU reduces the best estimate of the amount potentially recoverable from ratepayers. Therefore, common sense would lead to the conclusion that the MOU increases the economic benefit and decreases the extent of any cross-subsidy. Hopkins pf. at 3.

4. Reduced ratepayer cost overall reduces the cross-subsidy between existing and new VGS ratepayers. Using the current financial assumptions, which are almost certain to change, the Rate Cap in the MOU would reduce the expected period of cross-subsidy by approximately one year. Hopkins pf. at 10.

5. When the Rate Cap of the MOU is imposed, the cross-subsidy would be expected to end between years 32 and 33. While longer than might be desirable, this period of cross-subsidy is reasonable when looked at in the broader context of the general good of the State as a whole. Tr. 12/1/15 at 130 (Hopkins).

6. The number of years of the cross-subsidy is an imperfect measure of the Project as a whole. Tr.12/1/15 at 132 (Hopkins).

7. By limiting the Project costs potentially recoverable from ratepayers, the Rate Cap in the MOU has the following likely effects: 1) it increases the savings experienced by new VGS customers served by the pipeline, and 2) it decreases the expected bill increases experienced by existing VGS customers. The table below illustrates the impact on the present value of State GDP from these two effects of the Project, and how they vary based on the costs recoverable from ratepayers.

	20 year NPV (3% real)	**35 year NPV (3% real)**	**20 year NPV (7.94%)**	**35 year NPV (7.94%)**	**20 year NPV (9.75%)**	**35 year NPV (9.75%)**
$153.6 million ratepayer cost						
New VGS customer energy savings						
	$56	$111	$41	$67	$35	$51
Existing VGS customer bill increase						
	($91)	($120)	($72)	($85)	($63)	($72)
$144 million ratepayer cost						
New VGS customer energy savings						
	$57	$112	$41	$67	$35	$51
Existing VGS customer bill increase						
	($86)	($114)	($68)	($81)	($60)	($68)
$134 million ratepayer cost						
New VGS customer energy savings						
	$57	$112	$42	$67	$35	$51
Existing VGS customer bill increase						
	($81)	($108)	($64)	($77)	($57)	($65)
$124 million ratepayer cost						
New VGS customer energy savings						
	$57	$112	$42	$67	$35	$51
Existing VGS customer bill increase						
	($77)	($102)	($61)	($73)	($53)	($61)

Hopkins pf. at 7-8.

8. AARP's updated net economic benefit analysis accounts for the impacts of the MOU and changes in energy markets since rebuttal testimony was filed on May 27, 2015. David E. Dismukes, AARP ("Dismukes") pf. at 1.

9. The economic benefit of the Project as currently analyzed by AARP indicates a significant positive change. Tr. 12/9/15 at 107 (Dismukes).

10. The significant positive change as analyzed by AARP is attributable to the MOU by a magnitude of five to seven when compared to the impact of its fuel price update. Tr.12/9/15 at 107-108 (Dismukes).

11. AARP updated fuel oil prices to November 2015 whereas it updated natural gas prices to August 2015. This update did not include an additional rate reduction which occurred in natural gas prices in November 2015. Tr. 12/9/15 at 108 (Dismukes).

12. Adjusting natural gas prices to November 2015 as opposed to August 2015 would result in a positive adjustment to the benefits of the Project of approximately $3-4 million. Tr. 12/9/15 at 115 (Dismukes).

13. The "economic value added" measure contained in the AARP Economic Impacts analysis isolates the Vermont impacts and is a measure comparable to the measure used by the Department. Tr. 12/9/15 at 113-114 (Dismukes).

14. The Department updated its analysis to reflect Project costs to be borne by ratepayers on account of the Rate Cap in the MOU. The Department did not alter any aspects of its analysis that are based on overall Project cost, such as the economic impact of Project construction or property taxes. The Department also did not update any aspects of its analysis that never depended on either Project cost or ratepayer cost, such as conversion costs or the effect on other fuel industries. Hopkins pf. at 4-5.

15. In attempting to reconcile the Department's analytic outcomes with those of AARP, the biggest differences are the same ones discussed during the June 2015 proceedings such as differing assumptions on discount rates. Tr. 12/1/15 at 136 (Hopkins).

IV. **Discussion**

The Board has posed the question of whether and how the MOU might relate to its ultimate ruling on the pending Rule 60(b) motions in the Second Remand. The Board should consider the MOU in the context in which it is presented--it follows the Second VGS Cost Update, which estimated Project costs at approximately $154 million, and it reduces the amount of those Project costs which would potentially otherwise be borne by ratepayers but for the Rate Cap contained therein. Absent extraordinary circumstances, this places the Project costs potentially to be borne by ratepayers at \$134 million, which reflects the cost estimate reviewed by the Board following the First VGS Cost Update (\$122 million), plus a 10% contingency. Given the amount of attention that rate impacts and the potential for cross-subsidies have received with respect to the Project, this significant ratepayer benefit is material to the Board's consideration of whether or not to reopen the proceedings under the pending Rule 60(b) motions.

The uncontroverted evidence before the Board is that the MOU reduces the anticipated rate impacts of the Project and the potential for impermissible cross-subsidies. AARP, the only party other than the MOU's signatories to offer any analytic evidence on the MOU and its impact, agrees with this conclusion.

The Department continues to have significant concerns and points of disagreement with certain of the methodologies and assumptions employed by AARP. These areas of disagreement were fully discussed in the Department's July 8, 2015 Brief in this matter and include the appropriate discount rate and the number of years to calculate payback, among others. Two of these areas of disagreement warrant further mention here. The Department continues to believe that when assessing the general good of the State, GDP is the more appropriate and valuable measure as opposed to the measure of economic output utilized primarily by AARP. GDP (or value added) provides the more relevant Vermont in-state perspective when compared to economic output which includes certain out-of-state values.

AARP's contentions regarding projected losses in the delivered fuel industry continue to defy common sense when considering seemingly nonsensical results. As calculated by AARP, revenue losses in the delivered fuel industry attributable to the decreased cost of fuel oil are indistinguishable from revenue losses in that industry from the loss of customers due to the Project. AARP's analysis shows a direct proportionality between output, labor income, employment, and Vermont value added (the closest value presented to state GDP). This is regardless of the common sense fact that loss of fuel provider income due to reductions in the wholesale cost of fuel, which should rightly be reflected in economic output, should not proportionally impact in-state labor or value added. The direct proportionality shown in AARP's analysis provides further evidence that their analysis of fuel provider impacts is overstated.

Regardless of any remaining concerns with respect to AARP's analysis, AARP's conclusions with respect to the impact of the MOU are clear—it is positive in terms of rate impacts and the net economic benefits of the Project. These substantial ratepayer benefits should be considered by the Board as it determines whether or not to reopen the December 23 Order and CPG.

V. Conclusion

No party has presented evidence under Rule 60(b) that is of such a clear and controlling nature as would likely change the outcome of the Board's December 23 Order. The weight of the evidence continues to demonstrate that the Project meets the relevant statutory criteria and is in the public good. Therefore, the Board should deny the pending motions and decline to reopen the proceedings on or before January 8, 2016. This decision will ensure that the MOU remains in effect and ratepayers will benefit from its terms as the Project goes forward. The Board should return this matter to the Vermont Supreme Court for resolution of the pending appeal.

Dated at Montpelier, Vermont this 17th day of December, 2015.

Respectfully submitted,
VERMONT DEPARTMENT OF PUBLIC SERVICE

By: Louise C Porter
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