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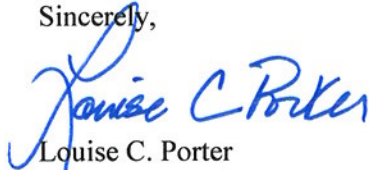
Mrs. Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street
Montpelier, Vermont 05620

Re: Docket 7970-VGS System Expansion

Dear Mrs. Hudson:

Attached for filing with the Board are an original and eight copies of the Reply 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
Special Counsel

cc: 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)

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

INTRODUCTION

The Department of Public Service hereby responds to certain of the arguments raised by others in initial briefs filed on December 17, 2015 in the above-referenced matter.¹ Briefs were submitted by AARP, Conservation Law Foundation (“CLF”), the Vermont Fuel Dealers Association (“VFDA”), Kristin Lyons (“Lyons”), Nate and Jane Palmer (the “Palmers”), the Department of Public Service (the “Department”) and Vermont Gas Systems, Inc. (“VGS” or “Vermont Gas”). Strikingly absent from the record evidence and briefs presented by the parties is relevant, persuasive evidence of any negative impacts of the MOU. Therefore, the Department continues to recommend that the Board consider all of the evidence, including the MOU, deny

¹ All terms not defined herein shall have the meaning ascribed to them in the Department’s Initial Brief.

the pending Rule 60(b) motions and decline to reopen the proceedings on or before January 8, 2016.

ARGUMENTS OF PARTIES

The MOU is not a Binding Agreement

Several parties, particularly CLF, have argued that the MOU is something less than a binding agreement.² CLF argues that the MOU is a statement of the parties' "intentions" as opposed to an "actual commitment." CLF Brief at 3. In support of this argument, CLF refers to the MOU's Agreement paragraph 2, which provides for the rate cap exclusions and references the parties' "intent" to restrict the scope of any such exclusions. CLF, however, ignores the fact that Vermont Gas "must clearly identify and support" any requests for such exclusions, which requirement is set forth in the same paragraph. CLF also ignores the MOU's Agreement paragraph 1 which states, in part, that Vermont Gas "shall not seek rate recovery of Addison Project costs in excess of \$134 million."

CLF's asserts that both parties reserve the right to advocate differ positions in future proceedings. CLF Brief at 2. CLF again, however, fails to include the entirety of the cited provision in its assertion, most particularly the clause qualifying this right, which provides "except as necessary to implement the Parties rights and obligations under this MOU." Other Provisions paragraph 3.

Finally, CLF offers that "[a]t best, the MOU is an agreement between two parties." CLF Brief at 2. What is not explained is how this is a negative conclusion or one that adversely affects the enforceability of the MOU.

² The Palmers did not raise this issue in their Brief, but rather through questioning of witnesses at the December 9, 2015 technical hearing. See Tr. 12/9/15 at 88-89 (Rendall) and at 133-134 (Recchia).

The Illusory Nature of the Rate Cap

AARP³ claims that neither the Department nor VGS has provided any analysis of the extent or likelihood of costs that may be excluded from the Rate Cap. AARP at 1. This is true. There is no way to reasonably calculate the extent or likelihood of costs which by their very nature are extraordinary. Such an exercise would be based on pure speculation and yield results of minimal value.

CLF also cites ongoing litigation with respect to construction contracts and actions in the field to ensure proper installation as evidence that costs will continue to rise. CLF Brief at 2. CLF fails to acknowledge that neither of these cost categories are included in the very limited and specific potential exceptions to the Rate Cap. Such an acknowledgment would recognize the very real benefit of the Rate Cap to ratepayers.

The MOU does not address the issues raised in the pending Rule 60(b) Motions

This allegation by AARP is, for the most part, accurate. With the exception of minimizing rate impacts of the Project and reducing the potential for impermissible cross-subsidies, the MOU was not intended to address issues raised in the pending motions as they have already been thoroughly addressed in the June 2015 hearings and briefing which followed. The MOU, as stated therein, was intended to advise the Board and parties of a significant ratepayer benefit that had been negotiated and to further advise the Board and parties of the effect that the lack of resolution of this proceeding was having on the Project with respect to staying on time and on budget.

The MOU did not purport to rehash the issues of (1) the availability of CNG to a certain limited class of customers in Middlebury; (2) any technological advances with respect to heat pumps, the users of which continue to need a back-up heat source; or (3) the price or forecasted

³ Any arguments or claims attributed to AARP were also advanced by Ms. Lyons, both of whom are represented by Mr. Dumont. In fact, with the exception of the identity of the submitting parties, the two briefs are essentially identical.

price of fuel oil and natural gas—all of which were reviewed this past summer in the Second Remand. The Second Remand proceeding began in January 2015 and has included testimony, discovery, hearings and briefs. For this reason, the Board made the scope of the instant proceeding very narrow with a focus on the MOU and its impacts.

Miscellaneous

Safety Issues. Despite the very narrow, prescribed scope of the proceeding set forth by the Board in the Procedural Order, some of the parties, notably AARP, attempted to turn this into a discussion around safety issues. This proceeding was never intended to address those very important issues. The Department, through its Gas Engineer and expert consultants, is involved in safety and public health discussions with Vermont Gas on a continuing basis, and as Commissioner Recchia testified, the Department is “monitoring the Project for quality and ensuring that it [is] being constructed appropriately.” Tr. 12/9/15 at 121 (Recchia).

Conversion Costs. The VFDA asserts that Vermont Gas does not account for “any” conversion costs. VFDA Post-Hearing Memorandum at 3. Vermont Gas, as well as the Department, provided testimony as to the projected amount of conversion costs. Simollardes pf. reb. (5/27/15) at 10-14; Hopkins pf. reb. (5/27/15) at 2-7. The fact that those projections don’t equate with those of VFDA is not a reason to deny that they exist and were presented to the Board.

The Used and Useful Standard. The VFDA alleges that a “major potential issue” of whether and to what extent the Project is deemed to be used and useful has been “take[n]... off the table” by the MOU. VFDA Post-Hearing Memorandum at 2. In support of this allegation, the VFDA refers to the MOU’s Introductory paragraph 7, but ignores Agreement paragraph 3 which states that “Nothing herein shall be construed as in any way limiting the Department’s ability to review, investigate, and challenge any request made by Vermont Gas for cost recovery, in whole or in part, related to the Addison Project.” On the other hand, the Palmers agree with the signatories to the MOU in concluding “what recovery, if any, relative to the ‘used and useful’ inquiry remains to be determined.” Palmer Brief at 6.

Criticism of Dr. Hopkins. In a section of its Brief entitled “The Recent Testimony Confirms the Need to Re-Open”, AARP takes the Department’s witness, Dr. Asa Hopkins, to task for being unfamiliar with a Board case from 1998, most particularly the Board’s recitation of the Prudence standard therein. AARP Brief at 15-16. AARP does not, however, explain how this lack of familiarity confirms or even relates to the “need to re-open.”

CONCLUSION

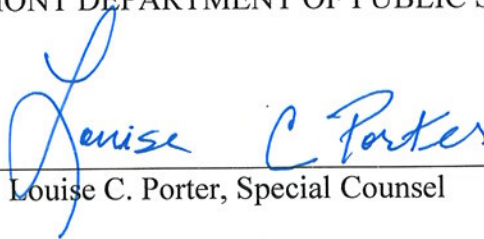
Based upon the foregoing and for the reasons set forth in its Initial Brief, the Department recommends that the Board deny the pending Rule 60 (b) motions on or before January 8, 2016 and decline to reopen the CPG. Denial of the motions by that date will ensure that the MOU remains in effect, for the benefit of Vermont Gas ratepayers. This docket should be returned to the Vermont Supreme Court for resolution of the pending appeal.

Dated at Montpelier, Vermont this 23rd day of December, 2015.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

By:



Louise C. Porter, Special Counsel