STATE OF VERMONT
PUBLIC SERVICE BOARD

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	)	Docket No. 7970

VERMONT GAS SYSTEMS, INC.'s
REPLY BRIEF

Vermont Gas Systems, Inc. ("Vermont Gas," "VGS," or the "Company") hereby replies to the proposed findings and briefs submitted by the Non-Petitioners.[1] As demonstrated herein, the Public Service Board (the "Board") should reject Non-Petitioner claims that the Company's hearing testimony was misleading, that reopening the CPG would not result in prejudice, and that there is a constitutional right to additional process.

I. Introduction.

It is important to remain focused on the salient points at issue in this proceeding. The only materially changed circumstance in this Section 248 proceeding is the estimated cost of the Project. That issue has been fully litigated over the course of this proceeding, and the weight of the evidence before the Board demonstrates that the Project continues to provide significant economic and environmental benefits to the State of Vermont and its residents. These include tens of millions of dollars of economic benefits over the next 20 years and hundreds of millions

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[1] AARP; Kristin Lyons; Nathan and Jane Palmer (the "Palmers"); Conservation Law Foundation ("CLF"); Vermont Fuel Dealers Association ("VFDA"); and 350 Vermont. Capitalized terms and acronyms not otherwise defined herein have the meaning set forth in the Company's Proposed Decision, filed on July 8, 2015.

over 35 years; increased fuel choice, fuel savings and price stability for Addison County residents, farmers, and businesses; increased reliability; material reductions in greenhouse gas emissions; and expanded energy efficiency, resulting in more energy savings and reducing environmental impacts even further.[2] Ultimately, although the estimated cost of the Project is significant, the benefits of the Project to the state and its residents are significantly higher.

The Project will make natural gas available for Addison County residents, including low income residents, thereby making their home-heating bills more affordable.[3] Addison County communities and customers, including Agri-Mark and the Addison County Regional Planning Commission, have expressed continued support for the Project.[4] In reliance on the CPG, several major Addison County employers have invested funds in system conversions in anticipation of the Project coming online and are poised to capture the expected savings and operational benefits from pipeline natural gas service.[5] Reopening the proceeding would undermine these important benefits to Vermont.[6]

VGS has made excellent progress following the Company's reset in December and remains on course to complete the Project on time and on budget. The Company has acquired

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[2] December 23rd Order at 135-36 (recognizing that the Project advances CEP goals); Simollardes 5/27/15 reb. pf. at 7-8 (providing net economic benefits of Project); Hopkins pf. at 12 (revised May 15, 2015) (same); Hopkins pf. at 13-14 (discussing non-quantifiable sources of value, including increased reliability); December 23rd Order at 86, 135, 136 (noting the importance of natural gas as a fuel choice); VGS 7/8/15 Response to Board Information Requests (providing Agri-Mark letter emphasizing savings to its farmer-owned business); Simollardes 5/27/15 reb. pf. at 6-7 (monetizing value of avoided GHG emissions); December 23rd Order at 4 (recognizing the Project's double greenhouse benefit of lower emissions and increased energy efficiency programs).

[3] December 23rd Order at 25 (summarizing comments on the Project's benefits to low-income Vermonters).

[4] *See* VGS 7/8/15 Response to Board Information Requests (submitting Agri-Mark letter highlighting the significant savings that the Project offers to Agri-Mark's farmer-owned business and Agri-Mark's continued strong support for extending natural gas from Chittenden County to Middlebury); ACRPC letter to Susan M. Hudson, Clerk of the Board, dated July 6, 2015 (advising that the ACRPC voted to re-affirm its support for the Project); *see also Agri-Mark Inc./Cabot Creamery's Post-hearing Brief* (asserting that the Board should not reopen under Rule 60(b)).

[5] VGS 7/8/15 Response to Board Information Requests (describing the actions taken by Middlebury College, Agri-Mark, and Vermont Hard Cider).

[6] *Northwest Reliability Project*, Docket No. 6860, Order of 9/23/05 at 25 (concluding in NRP that "the general good of the people of Vermont would best be served if the proceeding is not reopened"). While the Board must find that the Project continues to satisfy all applicable Section 248(b) criteria, the "ultimate question to be resolved" is "whether the project promote[s] the general good of the state." *In re UPC Vt. Wind, LLC,* 2009 VT 19, ¶ 7, 185 Vt. 296, 969 A.2d 144 (citing 30 V.S.A. § 248(a)(2)(B)).

almost all of the required easements, procured materials, and is now poised to complete the Project by late 2016.[7] Reopening this proceeding will jeopardize the Project's schedule and budget.[8] As the Company has made clear, the revised $153.6 million budget is predicated on completion of the Project in 2016.[9] And as the Board emphasized in its first remand Order, "procedural delays can be costly and may further exacerbate the cost increases of the Project, to the detriment of Vermont ratepayers and others who continue to incur the economic costs of waiting to take natural gas service."[10]

The Board also recognized the impact of delays in deciding not to reopen the proceedings for the Northwest Vermont Reliability Project ("NRP"), another major infrastructure project that experienced significant cost increases:

> "The NRP is a complex construction project with a tight, coordinated schedule. Interruptions and delays in the schedule from reopening would likely result in disproportionate delays in construction for a number of reasons, including the need to remobilize resources … and the potential loss of seasonal construction windows. … Other factors may also increase costs, including cancellation costs for equipment and personnel, and the possible need to remobilize resources if coordinated activities in the construction schedule fall out of synchronization"[11]

These types of consequences apply here, as highlighted by Mr. Sinclair:

> "[F]or a long linear construction project such as a gas pipeline project, construction timing and sequencing of the construction work is critical, both as to schedule and cost. To be most efficient, construction should be sequenced almost in an assembly line manner, with teams of contractors, equipment and materials deployed in sequence up and down the pipeline corridor. … Having significant ROW gaps at multiple places along the Project corridor would disrupt the Project's construction sequencing and

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[7] Tr. 6/22/15 at 59-61 (Rendall).
[8] Roam 1/15/15 pf. at 8 (explaining the consequences of significant delay); Roam 3/27/15 supp. pf. at 5-6 (same); Sinclair 3/27/15 supp. pf. at 3-4 (same). *See also Northwest Reliability Project*, Docket No. 6860, Order of 9/23/05 at 14, 25 (emphasizing cost impacts of delay in a complex linear construction project).
[9] *See, e.g.*, Roam 3/27/15 supp. pf. at 5-6.
[10] October 10th Order at 29.
[11] *Northwest Reliability Project*, Docket No. 6860, Order of 9/23/05 at 14.

> schedule, and result in construction crews jumping from location to location, mobilizing, demobilizing and remobilizing personnel and equipment. This equates to increased costs and delays in construction."[12]

Reopening the CPG would also inevitably delay the Company's ability to secure easements from the 7% of property owners on the corridor who have not yet reached agreement with Vermont Gas. In addition, reopening the CPG would delay resolution of pending and expected eminent domain proceedings that will be critical to timely completion of the Project. As Mr. Sinclair testified, it will be vital that any eminent domain proceedings be concluded by early 2016 if VGS is to hold to the current construction schedule.[13] The Board's prior order in this case staying eminent domains pending the outcome of this proceeding makes clear that reopening this proceeding will likely make achievement of this schedule impossible.[14]

Given the broad scope of this nearly 8-month cost investigation and ample opportunity to examine the issues, yet another proceeding re-litigating the CPG for this Project would not contribute meaningfully to the Board's analysis. The overwhelming weight of the evidence supports the need for this Project, and further delay will cause increased costs and adversely impact Vermonters who are depending on the expansion of natural gas service.

In summary, we respectfully submit to the Board that the facts clearly show that the Project remains in the public good for the environmental and economic benefits it will bring to residents and businesses and to the state as a whole. Reopening will only cause delay, increase costs, adversely impact the general good, and risk the viability of the Project.

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[12] Sinclair 3/27/15 supp. pf. at 3-4; exh. Pet. JH-13 (FERC illustration of gas pipeline construction sequencing that correctly characterizes the pipeline construction process as a "moving assembly line").
[13] Sinclair 3/27/15 supp. pf. at 4-5.
[14] *See* Docket 8480, Order of 4/29/15 at 1 (staying condemnation proceeding associated with the Project).

II. The Evidence Does Not Support Reopening Under Rule 60(b)(3).

Two prerequisites exist for securing relief under Rule 60(b)(3). First, the moving party must prove misconduct—such as fraud or misrepresentation—by clear and convincing evidence.[15] Second, the moving party must show that the misconduct foreclosed full and fair presentation of his or her case.[16] Where the moving party meets its burden, the court may relieve the party from the final order in which the misconduct occurred.[17] In making the threshold determination of whether to reopen under Rule 60(b), it is appropriate to consider the prejudice that would arise from setting aside the judgment.[18]

Here, certain of the Non-Petitioners allege that VGS knew in September, 2014 that the $121 million cost estimate previously submitted for the Project was wrong, and that VGS committed misconduct by failing to inform the Board and parties of that information. They further claim that the Company's actions deprived them of the right to fully and fairly litigate the issues of demand and cost under Section 248(b)(2) and (b)(4). The claims are inaccurate and contradicted by the record.

A. There Was No Misconduct Surrounding the First Project Cost Update.

During the first remand proceeding, VGS' witnesses made clear that the Company was monitoring and controlling the current estimate, that it would be using the AACE methodology for future estimates, and that there was no guarantee that the final number would be $121

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[15] *Gavala v. Claassen*, 2003 VT 16, ¶ 5, 175 Vt. 487, 819 A.2d 760 (citing *Bardill Land & Lumber, Inc. v. Davis*, 135 Vt. 81, 82, 370 A.2d 212, 213 (1977)); *see also Fleming v. N.Y. Univ.*, 865 F.2d 478 , 484 (2d Cir. 1989) ("[A] Rule 60(b)(3) motion cannot be granted absent clear and convincing evidence of material misrepresentations and cannot serve as an attempt to relitigate the merits.").

[16] *See, e.g.*, *Hutchins v. Zoll Med. Corp.*, 492 F.3d 1377, 1386 (Fed. Cir. 2007); *Karak v. Bursaw Oil Corp.*, 288 F.3d 15, 20 (1st Cir. 2002); *Frederick v. Kirby Tankships, Inc.*, 205 F.3d 1277, 1287 (11th Cir. 2000).

[17] V.R.C.P. 60(b)

[18] October 10th Order at 7.

million.[19] Nevertheless, the best estimate at the time of the first remand proceeding was $121 million, which was re-confirmed in the Company's October 7, 2014 cost update.[20]

Similarly, Ralph Roam, a PwC consultant to Vermont Gas, testified in this current proceeding that the Company had tools in place to monitor and control the $121 million estimate when mainline construction commenced in roughly June 2014.[21] As construction progressed, those tracking tools revealed some performance trends that were of concern in late September, which informed the Company's request for PwC to re-estimate the Project costs in a bottoms-up fashion using the AACE methodology.[22] PwC began its work on establishing the new estimate in October 2014 and did not know that there would be a significant increase until December, when the quantitative risk assessment ("QRA") was complete and contingency was established.[23] Vermont Gas promptly filed an update with the Board when the QRA process was completed.

The Non-Petitioners' allegations take the second remand testimony out of context and misstate what VGS knew about the $121 million estimate. Mr. Roam during cross-examination advised that he noticed in September that some costs were higher than expected, which warranted revisiting the Project budget.[24] He also testified unequivocally that he did not know that there would be a significant increase in the overall Project budget until December.[25] Eileen Simollardes likewise confirmed that the higher costs that PwC observed in September were

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[19] Gilbert 9/22/14 pf. at 3; tr. 9/26/14 at 111-13 (Gilbert); tr. 9/26/14 at 53-54 (Simollardes).
[20] Exh. CLF Cross 6.
[21] Tr. 6/22/15 at 89-90, 105 (Roam).
[22] *Id.* at 89-90.
[23] *Id.* at 113-14; *see also* Roam supp. pf. 3/27/15 at 3 ("The Estimating Team began its work in October of 2014 and completed the work in December of 2014."); Sinclair supp. pf. 3/27/15 at 3 (explaining that consistent with the Company's commitments during the first remand, VGS asked PwC to update the estimate to include a QRA and that "VGS and PwC began this effort in early October, 2014 and completed the most recent cost estimate in December, 2014").
[24] Tr. 6/22/15 at 109-11 (Roam).
[25] *Id.* at 113-14.

actual construction costs, not the overall budget.[26] No party offered contrary evidence. No party inquired of Mr. Sinclair, the Company's executive leader of the Project, in spite of Mr. Roam's testimony that Mr. Sinclair would be the best person to speak to regarding Vermont Gas' awareness of cost trends.[27]

To summarize, Mr. Gilbert testified that the Company was, at the time of the September, 2014 remand hearings, undergoing and undertaking significant changes in the management and review of the Project.[28] He also reported to the Board that the Company was taking a hard look at the $121 million estimate and would be using industry recognized standards such as AACE for future estimates.[29] PwC began this work in October of 2014, which included a QRA, and Mr. Roam testified in this second remand proceeding that the Company did not have a final number until the comprehensive re-estimate was complete in December and contingency was established.[30] Vermont Gas reported the results as soon as they were completed in December.

The concern that certain costs in September were higher than expected did not, on its own, lead to the conclusion that there would be a significant increase in the overall Project budgets. As explained above, the performance trends PwC observed in September provided a basis to undertake the process of a re-estimate—these trends did not provide a conclusion as to what the re-estimated costs would be.[31] Individual costs of major projects change constantly and can affect the contingency amount, without affecting the overall estimated costs.[32] In fact, the

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[26] Tr. 6/23/15 at 16 (Simollardes).
[27] Tr. 6/22/15 at 105, 110 (Roam); *see generally* tr. 6/22/15 at 188-97 (Sinclair).
[28] Gilbert 9/22/14 pf. at 3-5.
[29] *Id.* at 3; tr. 9/26/14 at 111-13 (Gilbert).
[30] Tr. 6/22/15 at 113-14 (Roam); *see also* Sinclair supp. pf. 3/27/15 at 3.
[31] Tr. 6/22/15 at 89-90, 113-14 (Roam).
[32] Roam 5/27/15 reb. pf. at 2; tr. 6/22/15 at 98-99 (Roam)

Company's October 7th Cost Update reflected line item changes and a contingency draw down, but no increase in the overall estimate of $121 million.[33]

Next, the Non-Petitioners' claims conflate PwC's work in the February-September timeframe with its work from October through December to argue that VGS must have known that the $121 million estimate was unreliable. The record, however, provides a clear contrast between PwC's work during these two timeframes. In February, 2014, PwC was initially engaged to take the existing $121 million estimate and develop a framework, known as a WBS, to monitor and control performance of the existing estimate, not to re-estimate it.[34] This monitor and control process played out from the start of pre-construction through September 2014.[35]

By contrast, PwC began a literal bottom-up re-estimate of costs at VGS' request in October—which was "far different" from the work that PwC did in March.[36] This re-estimate required a backwards look at all costs incurred to date against the work that was completed so those costs and scope items could be accurately carried forward into the new estimate.[37] As noted above, this work was not complete until the QRA was finished in December.[38] After completing its comprehensive analysis and getting a final number, VGS timely filed its second cost update.[39]

In short, VGS presented its best estimate during the first remand proceeding and was clear that a new methodology would be used moving forward and that costs could change.[40] The allegations that VGS withheld information from the Board and parties during the first remand is unfounded and contradicted by the testimony and evidence in the record. VGS respectfully

[33] Exh. CLF Cross 6.
[34] Tr. 6/22/15 at 90, 105 (Roam).
[35] *Id.* at 105.
[36] *Id.*; *see also* Sinclair supp. pf. 3/27/15 at 3.
[37] Tr. 6/22/15 at 105-06 (Roam).
[38] *Id.* at 114.
[39] Simollardes 1/15/15 supp. pf. at 2.
[40] Gilbert 9/22/14 pf. at 3; tr. 9/26/14 at 111-13 (Gilbert); tr. 9/26/14 at 53-54 (Simollardes).

submits that the Non-Petitioners have failed to meet their burden under Rule 60(b)(3) to establish misconduct by clear and convincing evidence, and that the Board should deny their request to reopen.

B. Parties Have Had a Full and Fair Opportunity to Litigate all Issues.

Under the Vermont Administrative Procedure Act (the "APA"), parties to a contested case have the opportunity to respond and present evidence and argument on all the issues involved.[41] The scope of the proceedings in this docket has been extremely broad.[42] The Non-Petitioners have had sufficient opportunity to address all the issues involved in this docket through multiple rounds of prefiled testimony, written discovery, depositions, and technical hearings during both the underlying CPG proceeding and the first remand proceeding on all issues, including Project need and economic benefit. They have therefore had a full and fair opportunity to litigate the issues in this docket.

The Palmers argument that they circumscribed the scope of their participation in this proceeding and would have more vigorously pursued the demand and cost issues is unsupported by the record. In fact, the Palmers filed testimony by third party witnesses on need and economics in the underlying CPG proceeding and the first remand proceeding.[43] For example, Jeffery D. Wolfe, P.E., an individual with "significant experience in the energy industry," offered prefiled testimony addressing the Company's "economic model assumptions" and "job creation assumptions."[44] Mr. Wolfe's testimony (1) asserted that additional models should be considered within the economic analysis to compare the Project to a renewable energy mix, (2) discussed financing costs for the Project, (3) analyzed natural gas price and supply assumptions,

[41] 3 V.S.A. § 809(c).
[42] *See, e.g., Procedural Order Re: Second Remand*, Docket No. 7970, Order of 3/25/15 at 3 (establishing scope).
[43] *See* Brunner pf. at 2-4; Wolfe pf. at 1-15; Peyser pf. at 4-24 (first remand).
[44] Wolfe pf. at narrative.

and (4) evaluated the Project's impact on the renewable energy industry in Vermont, among other matters.[45] Mr. Wolfe also offered testimony on the appropriate metrics for testing the economic merit of the Project.[46]

The Palmers also brought in outside witnesses during the first remand proceeding to address economics. In particular, Melanie Peyser submitted 24 pages of prefiled testimony and 25 exhibits on behalf of the Palmers analyzing the implications of the cost update to the economic benefit and least-cost analysis under Section 248.[47] The Palmers have filed numerous pleadings in this docket and engaged in extensive discovery on a wide range of issues, including Project need and economic benefit. Therefore, the Palmers' argument that they have circumscribed their role in this docket is contradicted by the materials they filed, their extensive motion practice, and the discovery served in this matter.

The only materially changed circumstance since the first remand is the cost of the Project, which has now been fully litigated. VGS respectfully submits that the parties have failed to meet their burden on the litigation prong of the Rule 60(b)(3) and that the Board should deny their request to reopen.

C. <u>Reopening the CPG Would Prejudice Communities and Businesses in Vermont.</u>

In determining whether to reopen under Rule 60(b), it is appropriate to consider the prejudice that would arise from setting aside the December 23rd Order.[48] Here, 350 Vermont alleges that VGS would suffer no prejudice if the Board grants relief from judgment and reconsiders whether to issue a CPG.[49] 350 Vermont's position is contrary to the paramount purpose of this Section 248 Project, which is to serve the public good. While a reopener would

[45] *Id.* at 6-11; exh. Palmer JDW-1.
[46] Wolfe pf. at 13-14.
[47] Peyser pf. at 1-24 (first remand); exhs. Palmer MP-1 through MP-25.
[48] October 10th Order at 7.
[49] *See Amicus Brief of 350 Vermont* at 25.

certainly prejudice VGS, ultimately, it would be the homes and businesses in Vermont that would be prejudiced by putting the completion of this Project at serious risk.[50]

The Board has emphasized that Vermont stands to realize a number of benefits from this Project, including increased economic activity, increased convenience and choice for customers, and increased access to energy efficiency programs.[51] The Board heard comments in this docket observing that making natural gas available for low-income Vermonters in Addison County will help these citizens keep their families and homes warm by making their bills more affordable.[52] More recently, the ACRPC re-affirmed its support for the Project by a vote of 23 to 9 in favor of the Project.[53] In reliance on the CPG, several major employers in Addison County have already invested funds and are poised to capture the expected savings and operational benefits from pipeline natural gas.[54]

A significant Project-scope change or a significant delay in the construction schedule would affect the current cost estimate for the Project.[55] Reopening the CPG would jeopardize the 2016 schedule for completion and impact Project costs. This delay would prejudice those communities, employers, and households that are waiting to receive natural gas. Further delay would add additional costs to the Project, to the detriment of Vermont ratepayers.[56] VGS submits that in exercising its discretion here, the Board should consider the consequences to the Project that would result from reopening, as well as the prejudice to households and employers in Addison County. The Board should deny requests to reopen under Rule 60(b)(3).

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[50] *See Northwest Reliability Project*, Docket No. 6860, Order of 9/23/05 at 14, 25 (considering prejudice to Vermont posed by reopening the CPG for the NRP).
[51] October 10th Order at 18; December 23rd Order at 72, 82.
[52] December 23rd Order at 25.
[53] ACRPC letter to Susan Hudson, Clerk of the Board, dated July 6, 2015.
[54] VGS 7/8/15 Response to Board Information Requests (describing the actions taken by Middlebury College, Agri-Mark, and Vermont Hard Cider).
[55] Roam 1/15/15 pf. at 8; Sinclair 3/27/15 supp. pf. at 4.
[56] October 10th Order at 29.

III. Constitutional Claims.

The constitutional claims raised by 350 Vermont in this proceeding are misguided. As for its due process claims, VGS respectfully submits that the Board has afforded the parties ample process in this matter as there has been three rounds of testimony, written discovery, depositions, and two full days of technical hearings during the roughly 6.5 month interval between VGS' notice of the Second Cost Update and filing of initial briefs.

Furthermore, the threshold question in any procedural due process claim is whether the parties have a constitutionally protected interest at stake.[57] In the absence of a protected interest, parties "have no constitutional claim to any particular procedures to protect such an interest."[58] Consistent with the Vermont Supreme Court's *New Cingular Wireless* decision, intervenors in this docket do not have a constitutionally protected interest in this Section 248 proceeding sufficient for a due process claim.[59]

In a related argument, 350 Vermont and other Non-Petitioners argue that the Board cannot rely on a future rate case to find that the Project will result in an economic benefit to the State.[60] While Vermont Gas agrees with this proposition, it must be considered in tandem with the well-established precedent from the Vermont Supreme Court and the Board that Section 248

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[57] *In re New Cingular Wireless PCS, LLC*, 2012 VT 46, ¶ 12, 192 Vt. 20, 54 A.3d 141 (citing *In re Great Waters of Am., Inc.*, 140 Vt. 105, 108, 435 A.2d 956, 958 (1981) ("Analysis of a claim of deprivation of property without due process of law commences with a determination of whether any right requiring constitutional protection in fact is involved.")).

[58] *Id.* ¶ 18 n.6 (citing *Hillside Cmty. Church, S.B.C. v. Olson*, 58 P.3d 1021, 1026 (Colo. 2002) (explaining that the U.S. Supreme Court and many state courts hold that there is "no property right in mere procedure")).

[59] *Id.* ¶¶ 15-19 (denying procedural due process claims on the basis that intervening landowners lacked a constitutionally protected interest in telecommunications proceedings under Section 248a, relying on precedent from "a closely analogous statute, 30 V.S.A. § 248") (citing *Vt. Elec. Power Co. v. Bandel*, 135 Vt. 141, 145, 375 A.2d 975, 978 (1977)); *see also id.* ¶ 18 (rejecting arguments that a statutory notice requirement and the Board's grant of permissive intervention established a property interest in the proceeding because those factors "are not sufficient to support a 'legitimate claim of entitlement' to a particular outcome in the § 248a proceeding, as opposed to a 'unilateral expectation'") (citation omitted).

[60] *See e.g., Amicus Brief of 350 Vermont* at 30-33.

does not mandate an exact accounting of economic benefits.[61] Rather, it requires that the Board find that the Project will result in some economic benefit.[62] As discussed in VGS' Proposed Decision, the weight of the evidence demonstrates that the Project will certainly result in an economic benefit to the State. The fact that the magnitude of that benefit may ultimately be influenced in a subsequent rate case before the Board is consistent with the Board's authority under the statutory structure and in no way undermines its finding that the Project will produce an economic benefit pursuant to Section 248(b)(4).[63]

350 Vermont further argues that the Project will offend the Common Benefits Clause of the Vermont Constitution because it will—in its determination—benefit a "very small number of customers" while those who will be required to bear the costs will receive "no benefit at all."[64] Vermont Gas respectfully disagrees. As an initial matter, as the Board found in its October 10th and December 23rd Orders, existing ratepayers will receive benefits from the Project that include enhanced reliability of the existing system, greenhouse gas reduction benefits, and increasing economies of scale.[65] These benefits are in addition to the overarching economic benefits that Vermont stands ready to receive from the Project.

Furthermore, even where certain persons will benefit more than others, the Common Benefits Clause is not offended "so long as the public purpose is paramount and the enactment

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[61] *See, e.g.*, *In re UPC Vt. Wind, LLC*, 2009 VT 19, ¶¶ 5-11; *Petition of Charlotte Solar, LLC*, Docket No. 7844, Order of 1/22/13 at 15 (finding that Section 248 does not require an "exact accounting" of the anticipated economic benefits); *Petition of Ga. Mountain Cmty. Wind, LLC*, Docket No. 7508, Order of 6/11/10 at 25.
[62] *See, e.g.*, *In re UPC Vt. Wind, LLC*, 2009 VT 19, ¶ 7; *Petition of Ga. Mountain Cmty. Wind, LLC*, Docket No. 7508, Order of 6/11/10 at 25.
[63] *Cf. In re UPC Vt. Wind, LLC*, 2009 VT 19, ¶¶ 5-11 (rejecting challenges to Board finding under (b)(4) where Board required petitioner to make further efforts to enter into stably priced contracts and explaining that while the Board plainly had sufficient evidence to warrant positive finding under the statutory criteria, the "promotion of the general good of the state can plainly encompass the potential for even greater economic benefit from taking advantage of a particular efficiency").
[64] *Amicus Brief of 350 Vermont* at 43-44; *see also Baker v. State*, 170 Vt. 194 , 212, 744 A.2d 864, 878 (1999) (holding that the Common Benefits Clause "is intended to ensure that the benefits and protections conferred by the state are for the common benefit of the community and not for the advantage of persons 'who are a part only of that community'") (quoting Vt. Const. Ch. I, Art. 7).
[65] October 10th Order at 23; December 23rd Order at 144.

reasonably related to that purpose."[66] This standard is easily satisfied here. As with all Section 248 projects, the overriding purpose of the Board's approval of this Project is to advance the public good. This fact is borne out by the communities and customers that have expressed continued support for the Project, have relied on the CPG, and are depending on its completion.[67] The Project also advances important energy policies articulated in Vermont's 2011 CEP.[68] As the Board has observed, almost any system expansion requires a contribution from existing customers for a period of time.[69] This fundamental aspect of system expansions under Section 248 does not contravene the Common Benefits Clause.

Finally, 350 Vermont asserts that approval of the Project would offend the frugality requirement under Article 18 of the Vermont Constitution.[70] Without citing any precedent, 350 Vermont claims that principles of frugality require that prior to issuing a CPG, the Board must evaluate the "specifics of how [Project] costs will be allocated among ratepayers" and conduct "an individualized cost-benefit analysis by rate class, ratepayer location, and the potential for unduly discriminatory rates according to age."[71] These requirements are not recognized under any of the Section 248 criteria, and as noted above, analyzing the economic benefits of the Project requires a finding of some economic benefit and does not mandate an exact accounting of the extent of the benefits and how they will be recovered.[72] Many of the concerns raised by 350 Vermont, and other Non-Petitioners, will be vetted and addressed in future proceedings

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[66] *USGen New England, Inc. v. Town of Rockingham*, 2003 VT 102, ¶ 28, 176 Vt. 104, 838 A.2d 927 (citation omitted).
[67] *See e.g.*, ACRPC letter to Susan M. Hudson, Clerk of the Board, dated July 6, 2015; VGS 7/8/15 Response to Board Information Requests; *Agri-Mark Inc./Cabot Creamery's Post-hearing Brief.*
[68] December 23rd Order at 135-37.
[69] October 10th Order at 26.
[70] *Amicus Brief of 350 Vermont* at 44-46.
[71] *Id.* at 46.
[72] *See e.g.*, *Petition of Charlotte Solar, LLC*, Docket No. 7844, Order of 1/22/13 at 15.

addressing rate recovery and cost allocation. For these reasons, the Board should reject 350 Vermont's frugality claims.

IV. Conclusion.

The weight of the evidence before the Board demonstrates that the Project continues to provide significant economic and environmental benefits to the State of Vermont and its residents. These include millions of dollars of economic benefits; increased fuel choice, fuel savings, and price stability for Addison County; material reductions in greenhouse gas emissions; and expanded energy efficiency services. Ultimately, although the estimated cost of the Project is significant, the benefits of the Project to the state and its residents are significantly higher.

Based upon the foregoing and the facts and analysis set forth in VGS' Proposed Decision, VGS respectfully asks that the Board find that there is no basis under V.R.C.P. 60(b) to reopen the December 23rd Order.

Dated at Burlington, Vermont this 10th day of August, 2015.

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