STATE OF VERMONT
PUBLIC SERVICE BOARD

Petition of Vermont Gas Systems, Inc., requesting 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 (In Re: Limited Remand from Vermont Supreme Court)	)	Docket No. 7970

Order Entered: ___________

I. Introduction

This proceeding results from our request for a limited remand of jurisdiction from the Vermont Supreme Court of our final order, dated December 23, 2013 (the "December 23rd Order"), in this Docket. The December 23rd Order granted Vermont Gas Systems, Inc. ("VGS," "Vermont Gas" or the "Company"), a Certificate of Public Good ("CPG"), pursuant to 30 V.S.A. § 248, to construct a natural gas pipeline extension into Addison County, Vermont (the "Project"). We requested the remand in light of VGS's July 2, 2014 filing, pursuant to Board Rule 5.409, providing notice to the Board that the estimated cost of the Project had increased by 41 percent (the "VGS Cost Update").

By the Order we issue today, the Board declines to re-open the December 23rd Order. We find that despite the increase in estimated costs, the Project will still provide substantial economic and environmental benefits to Vermont and its residents and promote the general good of the state. In particular, we find that the parties seeking to re-open this proceeding have failed to present evidence under Rule 60(b) of a material and controlling nature as would probably change the outcome of our December 23rd Order.

II. Background and Procedural History

The Board's December 23rd Order found that the Project will result in an economic benefit to the state and its residents and promote the general good of the state. On April 9, 2014, Kristin Lyons filed a notice of appeal of the December 23rd Order to the Vermont Supreme Court.

On July 2, 2014, VGS filed an update of the estimated capital costs of the Project pursuant to Board Rule 5.409. The VGS Cost Update reported a 41% net increase in the projected costs, totaling approximately $35.05 million, resulting in an overall updated budget estimate of $121.6 million for the Project's transmission and distribution mainline facilities.

On July 14, 2014, in response to the VGS Cost Update, Conservation Law Foundation ("CLF") filed a petition for a declaratory ruling that an amendment to the CPG is required because of the cost increase and seeking issuance of an injunction precluding VGS from proceeding with the Project in the absence of an amended CPG (the "CLF DJ Petition").

On July 21, 2014, CLF, Kristin Lyons, Jane and Nathan Palmer and the Public Service Department (the "Department") respectively filed comments in response to the VGS Cost Update. Ms. Lyons and the Palmers also filed a motion requesting that the Board investigate the cost increase (the "Lyons/Palmer Motion").

On July 22, 2014, the Vermont Fuel Dealers' Association filed comments in response to the VGS Cost Update. Also on this date, VGS filed a response to the CLF DJ Petition.

On July 23, 2014, Michael Hurlburt filed a motion for a declaratory ruling and injunctive relief (the "Hurlburt Motion").

On July 29, 2014, CLF clarified that the CLF DJ Petition was not intended to be addressed in Docket 7970.

On July 31, 2014, the Department filed a response to the CLF DJ Petition (the "PSD July 31st Comments").

On August 1, 2014, VGS filed comments on the PSD July 31st Comments.

On August 5, 2014, VGS filed a response to the Lyons/Palmer Motion and the Hurlburt Motion.

On August 26, 2014, in Docket 8328, the Board opened an investigation into whether and when VGS may have violated Board Rule 5.409.

On September 4, 2014, the Board issued an Order requesting a limited remand from the Vermont Supreme Court to allow for review of the December 23rd Order in light of the VGS Cost Update.

On September 11, 2014, the Vermont Supreme Court granted the Board's request to remand the December 23rd Order to the Board, allowing 30 days to determine whether to re-open proceedings in light of new cost information reported by VGS on July 2, 2014.

On September 12, 2014, the Board issued a procedural order on the limited remand, establishing a schedule and directing VGS to update Exhibit Board-1 to reflect the cost update and provide other information requested in the order.

On September 22, 2014, Vermont Public Interest Research Group ("VPIRG") and AARP filed motions to intervene in this proceeding on remand. On that same day, the Vermont Fuel Dealers' Association and Nathan and Jane Palmer submitted prefiled testimony.[1]

On September 23, 2014, CLF filed comments supporting the intervention of VPIRG, and the Department filed comments opposing both intervention motions.

On September 24, 2014, VGS filed responses opposing both intervention motions, and VPIRG responded to comments opposing its intervention. VGS also filed a Motion in Limine to exclude the prefiled testimony filed on behalf of the Vermont Fuel Dealers' Association.

On September 25, 2014 AARP responded to comments opposing its intervention.

By Order dated September 25, 2014, the Board granted permissive intervention status to AARP and denied the intervention request of VPIRG.

On September 26, 2014, Kristin Lyons filed a motion to reconsider the Board's September 25, 2014 order and rule that its interpretation of the remand order, arguing that the increased costs of the Project should not be reviewed in a vacuum and the Board should allow review of testimony concerning alternatives to the Project, or, if the Board believes the remand is limited to cost information, to strike parts of the prefiled testimony and exhibits of VGS witnesses Eileen Simollardes and Don Gilbert.

The Board held a technical hearing on September 26, 2014. At the technical hearing, the Board denied VPIRG's motion to reconsider the denial of its intervention, allowed Kristin Lyons to submit the prefiled testimony of Chris Neme concerning alternatives to the Project and denied

1 Nathan and Jane Palmer submitted prefiled testimony by Melanie Peyser that addressed the "completeness, reliability, and reasonableness of Vermont Gas Systems, Inc. (VGS) revised Project cost estimates and select economic and benefits [*sic*] claimed by VGS." Peyser pf. at 2. Ms. Peyser, however, does not hold herself out as an expert in utility rate making, rate design, or utility financing. Tr. 9/26/14 at 268 (Peyser). She has never participated in a utility rate making, rate design, or utility financing proceeding of any kind in the United States. Tr. 9/26/14 at 266-267 (Peyser). The Palmers also submitted prefiled testimony by Diane Derrick, but the witness was not available for cross-examination at the technical hearing in this proceeding.

the motion to strike parts of the prefiled testimony and exhibits submitted by VGS. The Board also denied admission of the prefiled testimony submitted on behalf of the Vermont Fuel Dealers' Association because the testimony was outside this proceeding's scope and the witness was not available for cross-examination.[2]

III. STANDARD OF REVIEW

When determining whether to re-open a prior, final order, the Board's review is governed by Vermont Rules of Civil Procedure ("V.R.C.P.") 60.[3] Rule 60(b), which applies to Board proceedings pursuant to Board Rule 2.221, establishes the requirements for re-opening a final decision of the Board.[4] In pertinent part, Rule 60(b) provides that:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; . . . or (6) any other reason justifying relief from the operation of judgment.

Rule 60(b)(2) allows the Board to grant relief from a final order on the basis of newly discovered evidence, provided that the new evidence be "'of such a material and controlling nature as will probably change the outcome.'"[5]

In *Northwest Reliability Project,* Docket 6860, the Board had granted the petitioner a CPG in January 2005, and in July 2005 the petitioner submitted an updated cost estimate

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2 Tr. 9/26/14 at 13, 203, 241-42 (Volz).

3 Docket 6860, Order of 9/23/05 at 19.

4 Board Rule 2.221 provides that the "[t]he provisions of the Vermont Rules of Civil Procedure, Rule 60 (Relief From Judgment Or Order) shall apply in proceedings before the Board."

5 Docket 6860, Order of 9/23/05 at 21 (*citing In re Petition of Ryegate Wood Energy Co.,* Docket 5217, Order of 11/30/90 at 4 (*quoting* MOORE'S FEDERAL PRACTICE § 60.23[4] (2d ed. 1990)). Rule 60(b)(6) permits reopening a final order for any other reason justifying relief, but the rule "only applies when the basis for relief does not fall within any of the other five subsections of Rule 60." *Id.* (*citing Perrot v. Johnston,* 151 Vt. 464, 466 (1989)).

reflecting a potential increase in costs of up to 90 percent.[6] Following a remand of the case from the Vermont Supreme Court, in which the Court limited the scope of analysis to the new cost information submitted by the petitioner, the Board provided the parties with an opportunity to move to re-open the proceedings to evaluate the effect of the updated cost estimate.[7] After determining the appropriate standard for review under Rule 60, the Board reasoned that the updated cost estimate constituted newly discovered evidence that was encompassed within Rule 60(b)(2), which permitted relief from a final order only if the new evidence was "of such a material and controlling nature as will probably change the outcome."[8] Based upon this standard, the Board held that re-opening the proceeding was not warranted because "[w]hile the near doubling of projected costs for the [Project] may, at some visceral level, seem to call for reexamination of the Project, the cost increase in fact is not likely to change the outcome of our January 28, 2005 Order."[9]

Notably, in *Northwest Reliability Project* the Board also addressed whether the decision to re-open the proceedings would be governed by the standards under V.R.C.P. 60 or the standards governing amendments to projects (including the "substantial change" standard now contained in Board Rule 5.408).[10] The Board concluded that the appropriate standards were those set forth in Rule 60.[11] In rejecting the applicability of the "substantial change" standard, the Board found that this standard did not touch upon the question of re-opening a proceeding, but rather applied "when changes to a previously approved project are so material that the

6 Docket 6860, Order of 9/23/05 at 1-2.
7 *Id.* at 5.
8 *Id.* at 21.
9 *Id.* at 22.
10 *See id.* at 18.
11 *Id.* at 19.

permittee must apply for an *amended* CPG."[12] As the Board concluded, "[w]ith a substantial change, the Board's order approving the original project is not reopened – the original CPG remains valid for the project as approved – but instead the amended application is considered in a new proceeding."[13] Accordingly, the "substantial change" standard is not the appropriate standard for the Board's review upon a limited remand of jurisdiction from a Vermont Supreme Court appeal, nor is it the appropriate standard to address more generally an estimated cost increase.

Further, Board Rule 5.409, which was promulgated in the wake of *Northwest Reliability Project*, specifically pertains to increases in project capital-cost estimates for a project permitted under Section 248. Rule 5.409 provides:

> Where a Vermont utility is the petitioner, or the costs of a project or a portion thereof are eligible to be recovered from ratepayers, the petitioner shall regularly monitor and update the estimated capital costs of any project it has proposed for or received approval under Section 248. When the estimated capital costs of such a project increase by 20 percent, and the increase is at least $25,000, or such other amount as the Board may order in a given proceeding or prescribe in a Procedure, prior cost estimates submitted by the petitioner to the Board, the petitioner shall notify the Board and parties of the new capital cost estimates for the project and the reasons for the increase. This requirement to monitor, update, and report shall continue until construction of the project has been completed.

This rule, which *specifically* governs increased cost estimates, does not direct that a petitioner seek a CPG amendment under Board Rule 5.408, a general rule governing project changes. Rather, Board Rule 5.409 directs that the petitioner notify the Board of significant or

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12 Docket 6860, Order of 9/23/05 at 19 (*citing In re Citizens Utilities Co.,* Docket 5841/5859, Order of 6/16/97 at 308 (ordering Citizens to "apply for an amended Certificate of Public Good, pursuant to 30 V.S.A. § 248, for the revisions to the 120 kV transmission line project") (emphasis in original).

13 *Id.* at 20 (*citing* Docket 5331-A, Order of 8/31/98 (new proceeding reviewing Citizens' petition for an amended CPG for the 120 kV line); Docket 4813-A, Order of 3/23/87 (requiring permittee to apply for amended CPG to reflect changes to project); Docket 6737, Order of 9/12/02 (new proceeding reviewing changes to previously certified substation)).

consequential cost-estimate increases, so that the Board can direct what actions, if any, might be warranted. If an increase in estimated project costs alone (as is the case here) were sufficient to require an amendment under Board Rule 5.408, this would produce an undesirable result in that Board Rule 5.409 would be rendered superfluous.[14] In other words, there would be no need for a specific rule governing the submission of updated cost estimates.[15] The precedent established in *Northwest Reliability Project* further supports the applicability of Board Rule 5.409 over Rule 5.408 in the present matter.

IV. FINDINGS

Based on the evidence of record and the testimony presented at the hearing, the Board finds as follows:

A. Overview of the Increase in Estimated Costs

1. Before we issued a CPG in December, 2013, VGS had estimated the Project to cost $86.6 million for Project transmission and distribution mainline facilities. *See* exh. Pet. Supp. EMS-1.

2. VGS filed a re-baselined cost estimate on July 2, 2014, and determined that the budget estimate should be increased by $35 million. Simollardes supp. pf. at 2; *see* exh. Pet. Supp. EMS-1.

3. $19.5 million in increased construction costs constitutes the majority of the estimated cost increase. Simollardes supp. pf. at 2.

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14 *Cf. Roy v. Woodstock Cmty. Trust, Inc*., 2013 VT 100A, ¶ 55 ("It is, of course, axiomatic that statutes must not be construed in a manner that would render their language superfluous or lead to irrational results."); *Murdoch* v. *Town of Shelburne*, 2007 VT 93, ¶ 5, 182 Vt. 587, 939 A.2d 458 ("We will avoid a construction that renders any portion of a statute ineffective or superfluous.").

15 CLF points out that the Department has recommended to the Board that "the substantial change test . . . not be limited to physical changes, but could also apply to costs increases for permitted projects." CLF DJ Petition at 5 (*quoting*, Docket 6860, Order of 9/23/05 at 20, n. 29). But in the same Order from which CLF quotes, the Board declined to rule on that recommendation. And more importantly, in subsequently adopting the Board Rules governing CPG issuance in October 2006, the Board opted to address cost increases in a separate rule (5.409), rather than in the general "substantial change" rule (5.408).

4. Pipeline construction costs overall have increased extensively within the last year. Tr. 9/26/14 at 293 (Peyser).

5. International Paper is responsible for paying for approximately $7.6 million (20%) of the estimated cost increase. Simollardes supp. pf. at 2; tr. 9/26/14 at 36, 56 (Simollardes).

6. VGS will provide the Board, the Department and the parties with quarterly cost updates going forward. Simollardes supp. pf. at 2, 9.

7. Estimating pipeline project costs is not an exact science. Tr. 9/26/14 at 302, 318, 321 (Peyser).

8. The estimated project costs for utility projects and the corresponding actual costs typically do not match. Exh. NP Peyser-4; exh. NP Peyser-5; tr. 9/26/14 at 301-02, 306 (Peyser).

B. Economic and Environmental Benefits of the Project

9. Despite the increase in estimated costs, the Project continues to have substantial economic and environmental benefits to the state and continues to meet the 30 V.S.A. § 248(b)(4) criterion. Poor remand pf. at 6.

10. Even with the budget increase, the Project is expected to save Addison County homes and businesses that convert from heating oil and propane to natural gas $195 million over the next 20 years. Gilbert supp. pf. at 7; tr. 9/26/14 at 168 (Gilbert).

11. The Project will result in property tax payments of about $2.4 million per year, totaling $43 million over the next 20 years. Gilbert supp. pf. at 7.

12. The Project will result in carbon-reduction savings of over $27 million, or $100 per ton, and over $114 million, when including emission reductions from International Paper.

Gilbert supp. pf. at 7; Simollardes supp. pf. at 10; tr. 9/26/14 at 107 (Gilbert); *see* exh. Pet. Supp. EMS -3.

13. The Project will result in large economic benefits, between $42.49 million and $71.89 million depending on the discount rate, and these large benefits are independent of any energy efficiency and greenhouse gas benefits. Poor remand pf. at 4-6; tr. 9/26/14 at 181-82 (Poor).

14. The Project will support economic development in Vermont through saving local businesses money, which will translate into increases in the number of Vermont jobs, production capacity and competitiveness of Vermont businesses. Gilbert supp. pf. at 7.

15. Through Vermont Gas's capital investment, the Project has provided and will continue to provide indirect economic benefits, including construction-related jobs and income to local businesses as a result of these jobs. Gilbert supp. pf. at 7.

16. The Project will bolster the reliability of Vermont's energy supply. Gilbert supp. pf. at 7.

17. The Project will reduce over 18,000 tons of greenhouse gas emissions per year, which in 20 years is equal to over 300,000 tons of emissions (and does not count the significant reductions available from International Paper). Gilbert supp. pf. at 8; tr. 9/26/14 at 131 (Gilbert).

18. The Project will reduce the equivalent of over six million gallons of oil use per year. Gilbert supp. pf. at 8; tr. 9/26/14 at 131 (Gilbert).

19. The Project will decrease fuel usage through increased energy efficiency. Gilbert supp. pf. at 8.

20. The Project will reduce the number of heavy vehicles on the roads and their associated emissions. Gilbert supp. pf. at 8.

21. The Project's economic and environmental benefits far exceed the cost, even if the Project has additional costs in the future. Tr. 9/26/14 at 130-31 (Gilbert).

22. In response to a Board request, VGS updated its economic analysis to extend it until the time when VGS's anticipated return on equity equals or exceeds its authorized return and to show the annual and cumulative contribution (or shortfall) from the Project each year, assuming the carrying costs in VGS's authorized return on equity. Simollardes supp. pf. at 3.

23. VGS's analysis also shows Project economics with recovery of costs from International Paper (and without recovery of costs as a hypothetical) and then with and without any additional rate relief and any withdrawals from the System Expansion and Reliability Fund (the "Fund"). Simollardes supp. pf. at 3-4.

24. For the purpose of its analysis, VGS updated cost inputs, other inputs, including rates for other fuels, and its current cost of equity of 10.26%, as opposed to 9.75% in VGS's original analysis. Simollardes supp. pf. at 4.

25. VGS's analysis of the Project costs on a stand-alone basis assumes that only Addison County residents and International Paper cover those costs, despite the fact that the cost of electric and natural gas distribution service is generally allocated to all customers. Simollardes supp. pf. at 7-8.

26. It is inappropriate to characterize the length of time before the Project achieves VGS's return on equity as "payback," because there is continual payback from the Project, such as greenhouse gas benefits. Tr. 9/26/14 at 184 (Poor).

27. With recovery of costs from International Paper, and without withdrawing from the Fund additional rate relief, the Project achieves VGS's return on equity between years 16 and

17, two years longer than VGS had shown in its original cost estimate. Simollardes supp. pf. at 5; tr. 9/26/14 at 75 (Simollardes).

28. Taking the revised cost estimate into account, there is a 3.6% rate impact associated with the Project in 2015, with a Fund balance in 2031 of $69.8 million. To bring the Fund balance to the level originally reflected in Exhibit Board-1, an additional rate reduction of 2.3% would be implemented in 2025. Simollardes supp. pf. at 6.

29. Any additional cost increases would be essentially linear in terms of return on equity and rate increases. Each $10 million in Project costs adds one to two years before the Project carries its own weight without additional rate changes or withdrawals from the Fund. From a rate perspective, a $10-million increase in Project costs results in an incremental rate increase of approximately 0.5% over 10 years assuming International Paper is a customer, and without International Paper the rate impact over 10 years is approximately 1%. Simollardes supp. pf. at 9; tr. 9/26/14 at 65 (Simollardes).

30. The Department performed a simple threshold evaluation of removing $35 million directly out of the previously-estimated net economic impact. Poor remand pf. at 3.

31. The simple threshold evaluation represents the Department's "worst-case" scenario on the revised cost estimate's potential effect on economic impacts, and the Department found that the Project's economic impact remains positive. Poor remand pf. at 3.

32. The Department also evaluated the impact of the cost increase using the PI+ model developed by Regional Economic Models Inc. ("REMI"), which captures economic changes among classes of ratepayers, industries, and sectors utilizing energy resources along with multiplier effects of consumer spending in various sectors of the economy. Poor remand pf. at 3.

33. The following table sets forth the REMI analysis of the economic impact on the Vermont economy from the revised cost estimate, under varying discount rates. The Project's positive economic impact reflected in the table does not take into account aggressive energy efficiency programs, greenhouse gas benefits or additional, direct local construction-spending-related benefits, conservative assumptions that tilt the modeling results toward showing less economic growth.

Impacts of Revised Cost Estimates on Economic Impacts of Phase I			
Discount Rate	3.00%	7.69%	9.75%
Phase I base impact	$89.79	$60.35	$52.09
VT economy impacts of revised cost estimates	-$17.9	-$11.5	-$9.6
Revised Economic Impact	$71.89	$48.85	$42.49

Poor remand pf. at 4-6; tr. 9/26/14 at 172-73 (Poor); *see* exh.-DPS-WP-Remand-1.

34. While the estimate is conservative, the Project still provides substantial benefits no matter what discount rate is used. Tr. 9/26/14 at 176 (Poor).

35. With low natural gas prices due to a substantial increase in the natural gas supply, Vermonters' fuel costs can be lowered in those places where natural gas is offered to replace other heating fuels. Gilbert supp. pf. at 5.

36. Natural gas produces fewer greenhouse gas emissions than other fuels, such as fuel oil or propane. Gilbert supp. pf. at 5; Simollardes supp. pf. at 9.

37. Natural gas equipment is available at higher efficiency levels and costs less to maintain than the equipment used to burn other fuels. Gilbert supp. pf. at 6.

38. More Vermonters will be able to take advantage of VGS's nationally-recognized, energy-efficiency programs to help customers increase efficiency, while further reducing costs and emissions. Gilbert supp. pf. at 6.

39. As with other fuels, natural gas customers do not have to make large upfront payments for fuel deliveries or worry about running out of fuel. Gilbert supp. pf. at 6.

40. Based on the Department's August 2014 fuels-cost comparison, the price for natural gas is 40% less than fuel oil, 50% less than propane and 13% to 56% less than electricity depending on the technology employed. Gilbert supp. pf. at 6; tr. 9/26/14 at 116-17 (Gilbert).

41. Natural gas can help reduce Vermont's dependence on oil, greenhouse gas emissions and wear and tear on the state's roads from the trucks required to deliver other fuels. Gilbert supp. pf. at 6.

42. Natural gas helps to support the local economy, through reducing energy costs for businesses and thereby supporting, retaining and, in some cases, creating jobs. Gilbert supp. pf. at 6.

43. Recent successful expansions of natural gas into new communities in Chittenden County has demonstrated not only strong demand for natural gas service from Vermont's residents and businesses but also the economic and environmental benefits of natural gas service. Gilbert supp. pf. at 6-7.

44. The Project includes facilities in Chittenden County, including transmission facilities and a gate station in Williston, that will enhance the reliability of the existing system. Simollardes supp. pf. at 8-9.

45. Existing VGS customers will benefit from the increasing economies of scale that result from the expansion. Simollardes supp. pf. at 9.

46. Christopher Neme of Energy Futures Group, on behalf of Kristin Lyons, provided a fuel-switching analysis that concluded that from a customer perspective and a societal perspective, the net benefits of switching from oil and propane to cold climate, ductless heat

pumps are comparable to the net benefits of switching to natural gas. Neme pf. at 2; tr. 9/26/14 at 216 (Neme); exh. Neme B.

47. The customer economics modelled by Mr. Neme assumed the heat pumps would operate at a coefficient of performance ("COP") – or efficiency – of 2.8. However, the PSD's August, 2014, Vermont Fuel Price Report applies a lower COP of 2.4. Exh. Neme B at 4; exh. Pet. Cross Neme-1 at 3.

48. If the lower 2.4 COP were used by Mr. Neme, the result would be both higher emissions and higher customer costs for electric-sourced heat pumps than reflected in his report. Tr. 9/26/14 at 235 (Neme); exh. Pet. Cross Neme-1 at 3.

49. Cold climate heat pump technology does not have an application that could work to meet the thermal needs for most commercial customers or for industrial customers and therefore is not an alternative to natural gas. Tr. 9/26/14 at 222-23 (Neme).

50. Even for residential customers, there is still a need for a back-up heating system. Tr. 9/26/14 at 213 (Neme); exh. Pet. Cross Neme-2.

51. The model of ductless heat pump that Mr. Neme used in his fuel-switching analysis is not yet on the market. Tr. 9/26/14 at 228 (Neme); exh. Pet. Cross Neme-4.

52. The Department's fuel price report also reflects that heating with an electric cold-source heat pump is about 13% higher in cost than heating with natural gas. Exh. Pet. Cross Neme-1 at 3.

53. The emissions rate per MMBtu fuel consumed is also significantly higher for electricity than natural gas or oil. Exh. Pet. Cross Neme-1 at 3.

54. Throughout the proceedings, several parties have referred to electric cold source heat pumps as a source of "renewable energy." However, air source heat pumps are renewable

only to the extent that the source of electric generation used to supply the electricity for the heat pump appliance is renewable. *See generally* exh. Pet Cross Neme-1.

55. The ISO-New England electric-generation supply is predominantly fossil fuel-based, with natural gas generation supplying most of the electric energy supply, both generally and as the marginal source of supply. Exh. Pet. Cross Neme-9 at 17-18.

56. Between 1999 and 2012, 87% of the new generating capacity added to the New England system was natural gas-fired generation. Exh. Pet. Cross Neme-9 at 16.

57. Renewable electric generation currently represents a small percentage of the electric energy production for Vermont and for New England. Exh. Pet. Cross Neme-9 at 15, 17-18; exh. NP Peyser-25.

58. VGS is making ongoing changes to its Project team, evolving and growing its team to ensure that the Project is effectively managed. Gilbert supp. pf. at 3-5; tr. 9/26/14 at 127-28 (Gilbert).

59. The Project has gone through several stages, including conceptual and regulatory, and is now in the construction stage. The level of responsibility of and delegation of work to different individuals has been based on a particular stage, and now VGS is very focused on the construction stage. Tr. 9/26/14 at 134-35 (Gilbert).

60. VGS is growing considerably and is adding positions within VGS based on this growth, the revenues from which will help cover the cost of these employees. Tr. 9/26/14 at 158 (Gilbert).

61. While recognizing the substantial economic and environmental benefits, VGS will monitor Project costs continually and has agreed to provide the Board and the Department with quarterly cost updates going forward. Tr. 9/26/14 at 129-31, 158 (Gilbert).

62. VGS is more confident in its revised cost estimate based on known factors, because VGS has already purchased the pipe, contracted with 70% of the landowners, and fully-engineered the Project, with some exceptions based on individual landowners. Although the Company is not saying that its current estimate is the final price, the Project will continue to provide huge economic and environmental benefits to the state. Tr. 9/26/14 at 52-54 (Simollardes); 113, 128-29 (Gilbert).

63. Ultimately, this Project is about customer choice. There is a need for the Project to bring natural gas to a geographic area of the state that does not have natural gas service. December 23rd Order at 70.

V. CONCLUSION

After a rigorous examination of the evidentiary record and analysis of the legal arguments put forth by parties in this Docket, we are convinced that the proposed Project continues to provide substantial economic and environmental benefits to Vermont despite the increased cost. We therefore find that the parties seeking to re-open this proceeding have failed to meet their burden under Rule 60(b)(2) to present evidence of such a material and controlling nature that re-opening this docket will probably change the outcome of the proceeding. No party presented evidence claiming fraud, misrepresentation or other misconduct by clear and convincing evidence under Rule 60(b)(3). We further conclude that the evidence presented does not warrant relief under Rule 60(b)(6). Finally, we find that the proposed Project will promote the general good of the state and that this general good would be best served if this Docket is not re-opened.

For the reasons explained above, we decline to exercise our discretion to re-open this proceeding, and we deny Lyons/Palmer Motion and the Hurlburt Motion.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the State of Vermont Public Service Board that:

1. The December 23rd Order in this Docket will not be re-opened, and jurisdiction of this matter is returned to the Vermont Supreme Court.
2. The Lyons/Palmer Motion and the Hurlburt Motion are denied.

Dated at Montpelier, Vermont, this ___ day of ________________, 2014.

________________________	)	PUBLIC SERVICE
	)	BOARD
________________________	)	OF VERMONT
________________________	)	

A TRUE COPY:
OFFICE OF THE CLERK

Filed:

Attest: ________________________
Clerk of the Board

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