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

POST-HEARING BRIEF OF KRISTIN LYONS

INTRODUCTION

Ms. Lyons asks that the Board grant the pending motions and petitions filed by her, AARP, the Conservation Law Foundation and the Palmers. The proceedings should be reopened. The existing Certificate of Public Good should be withdrawn. VGS should be ordered to apply for a modified Certificate of Public Good, authorizing only the first 11 miles of the project which have been constructed already. The Board should order cessation of all construction that serves any purpose other than providing reliability to existing customers.

The October 7, 2015 MOU has been admitted into evidence. Neither VGS or the DPS has provided any analysis of the extent or likelihood of costs that may be excluded from the rate base cap. Ms. Lyons submits that a rate base cap may be useful but does not believe the rate base cap in the MOU provides sufficient protection to ratepayers.

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1. A DIFFERENT NEED, A DIFFERENT PROJECT

Phase 1 today bears scant resemblance to the project that was approved in 2013.

	2013 Phase 1	2015 Phase 1
Need	replaces oil & propane for residences & business	competes w cchp re residences, replaces CNG re businesses
GHG Impact	reduces 220,000 tons by replacing oil & propane	adds very large amount of GHG by displacing cchp
Heating cost	saves 40% heating bill	same cost or more expensive than cchp
Cost	$86.7M	$154M
Cost Potentially In Rate Base	$86.7M+	$134M+
Rate Pressure	2.6 to 4.5% rate increase	10 to 11% rate increase
Cross-subsidy	up to 20 years	32 years
NPV	$87M	below zero
Safety	"demonstrated" safety commitment	"critical elements" of QA plan missing; welding violations; CEO says this is "normal"

In 2013, the project was found to be needed to reduce greenhouse gasses (GHG) and the cost of home heating. The Board found that piped natural gas could save as much as 220,000 tons of GHG over 20 years as compared to oil and propane, and would save residential customers 40% of their heating bills. 12/23/113 Order, page 1. Cold climate heat pumps remained an unknown factor.[1]

[1] The Board's order stated, at page 55:

Today, cold climate heat pumps significantly out-compete piped natural gas in GHG savings and run neck-and-neck in customer cost. Neme May 6, 2015 Attachment B (Report) Tables 7 & 9 and pp.7-9 (GHG); Neme pft pp.5-6, Neme rebuttal pft p.3, Neme Attachment B p.5 (customer costs). Hopkins May 27, 2015 rebuttal p.8 Answer 8 (Neme's analysis of npv of customer savings is "quite well done"); Hopkins 6/23/15 transcript p.112 (agrees with Neme's analysis of distribution losses). It would not serve the general good of the State and conform to the State's energy plan to use ratepayer funds to cross-subsidize construction of a pipeline that would contribute significantly greater amounts of GHG than the heat pump alternative that requires no ratepayer subsidy. The Board stated in its 12/23/15 Order, in Finding 512, that the Comprehensive Energy Plan seeks to increase use of natural gas "where nonrenewable fuels remain necessary." (Emphasis added.)

In 2013, the Department's two experts made clear that installation of CNG in Middlebury would be incompatible with the expenditure of ratepayer funds to construct this project. Either CNG would reduce GHG emissions and costs for businesses in Middlebury or the project would do so -- but not both. Nagle 8/14/13 PFT p.4; Poor 8/14/13 PFT p.11.

Today, VGS has already constructed CNG distribution facilities in Middlebury, Middlebury industry and business are using CNG, and VGS plans to place the costs of construction into rate base. AARP Cross 20 (Palmer: VGS.RTA1.1-13). About half of the originally projected

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> We recognize that renewable technologies are becoming more cost-effective and that this comparison may change in the future. The price of solar panels continues to decline. If they become inexpensive enough, electricity may become cost-effective as a source of heat. The efficiency of heat pumps at cold temperatures also continues to improve. But there is no evidence suggesting that the introduction of natural gas will affect deployment of these technologies or renewables generally.

demand for the project has been met by CNG, at a higher price than piped gas but with similar GHG reductions. See 6/22/15 transcript. Pp. 227-237, esp. p. 237 lines 17-20 and AARP Cross Exhibits 10, 21, 27 and 44.

In 2013, the Board found that the project would cause modest pressure on rates. Finding 248 stated: "In the event that the Project is built but Phase II is not, Vermont Gas projects a 2.6 to 4.5 percent rate increase for existing Vermont Gas customers, but nonetheless still results in a positive economic benefit to Vermont. Carr pf. at 12-13." The Board found that existing customers would cross-subsidize new residential and commercial customers for up to 20 years. Discussion, 12/23/13 Order p.102.

Today, at $134 million (i.e., assuming the MOU caps rate base at $134 million) the rate impact would be 12.3% when levelized over 25 years. Dismukes 11/23/15 pft p.6. Ms. Simollardes testified that the rate impact levelized over 25 years of the $121.6 million version of the project would be 15.2% if SERF funds are not utilized, and that she still believes these numbers are correct. 12/9/15 transcript pp. 94, 96. See also Simollardes 9/22/14 pft p.9 (1% rate impact for each $10 million cost increment above $121 million).

In 2013, the cost of the project was $86.7M and the NPV for the state economy was similar, $87 million (using the utility's weighted average cost of capital as the discount rate). Finding 246.

Today, the cost of the project is $154M, and VGS and the DPS propose to cap addition to rate base at $134M plus costs from material delay. The NPV of the project on the state's economy, once the lost value of replacing oil and propane by Middlebury businesses is taken into account, has fallen well below zero regardless of the $134M cap on rate base. The below-zero NPV is based on *Dr. Hopkins'* calculations of lost value. Dr. Hopkins does not dispute the below-zero NPV; he believes the Board should assume the replacement of oil and gas by CNG in Middlebury

has not occurred. Dismukes 11/23/15 pft pp.13-17; 12/9/15 transcript pp.118-119 (Hopkins).

In 2013, the Board rejected calls for 300-foot setbacks from every home on the basis of VGS' "demonstrated commitment" to safety in construction of the pipeline. Order p. 56. The Board relied on VGS' commitment to follow DPS expert witness David Berger's recommendations, including adoption of a QA plan prior to construction. Finding 264; Berger reb. PFT p.6.

Today, the Board knows that the first 11 miles of the pipeline were constructed despite repeated warnings that QA controls over welding and other important issues were missing, that VGS' practices resulted in a written notice that pipeline welding violated federal safety regulations, that four sections of pipe were damaged during installation and that by the end of July of 2015 the DPS engineer reported that VGS still had not adopted "critical elements" of the QA plan. Exhibit O.[2] The CEO of VGS testified that in his view the Department's concerns were just

[2] Exhibit O p.2, 2/4/15 – refers to 2014 written notice of "probable violations of pipeline safety regulations related to pipeline welding of the ANGP in 2014."
Exhibit O p.4, 3/25/15 – "excessive damage" found; DPS states inspection criteria are not adequate.
Exhibit O pp. 4-5, 4/8/15, 4/15/15, 4/29/15 – construction suspended because of need to analyze causes of damage.
Exhibit O, pp-5-6, 5/13/15 – 800 feet of installed pipe removed due to installation damage.
Exhibit O, pp.7-8, 7/1/15 – VGS submits revised welding program to address safety regulation violations which occurred in 2014. Second pipe found to suffer installation damage
Exhibit O, p. 8, 7/8/15 – Third and fourth pipes found to suffer installation damage. "The Gas Engineer reiterated concern to VGS that the company has not established adequate construction methods and inspection techniques to reliably ensure appropriate conditions of all pipe installed by HDD...."
Exhibit O, p.9, 7/22/15, 7/29/15 - DPS engineer had already told VGS its QA plan is not acceptable. "Critical elements" were missing. These include "criteria for inspection of production-welding processes." VGS replies that the missing parts of the plan "are not currently available."
Exhibit O, p.10, 8/19/15 – VGS "is addressing" DPS engineer concerns re welding pipeline coating, overall quality control.

the "give and take of the regulatory oversight process" and "are not unusual" and that VGS responded "in the normal course." 12/9/15 transcript pp.32-33. When asked if "as we sit here today," the company had adopted the QA plan it had agreed to in 2013, which the Department's engineer had found was missing "critical elements" as of late July 2015, the CEO answered "I believe so." He was unclear on the details because the QA issue "has been an ongoing discussion with the Department over pretty much the entire time that I have been at the company." p.39.

2. THE LIMITED RELEVANCE OF THE MOU

Eight requests for relief are pending before the Board. The MOU has limited or no relevance to these requests.

The first request for relief is the July 14, 2014, Petition filed by Conservation Law Foundation seeking a declaratory ruling that the $121 million cost of the project requires VGS to seek approval of a substantially changed project under Board Rule 5.408. The petition was assigned Docket No. 8330. AARP moved to intervene. The motion to intervene was granted. AARP submitted a brief on July 8, 2015 urging the Board to grant the petition. AARP's brief concluded:

> Under current law, therefore, a utility that has obtained § 248 approval has accepted a continuing duty to seek a permit amendment if it discovers that the project has changed in a manner that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the state under Section 248(a). Cost may be, but is not necessarily, one such factor. In the NRP case, it was not.
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> Board Rule 5.408 does not require that a permit amendment be denied and that the project be cancelled. The Board Rule requires that the permit amendment be *applied for*. See Citizens Utilities, 179 P.U.R. 4th at 95. A hearing would then be held and a ruling issued, on the merits.
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> Here, as in Citizens Utilities, evidence of the need for an amended permit comes from the mouths of the utilities' own witnesses. There are no issues of credibility. There are no disputes about the material facts. According to VGS itself, the cost of the project has blossomed from $86 million to $156 million, while the intended purpose of the project has been curtailed because roughly half of the proposed replacement of oil and propane by gas no longer will occur. Instead,

> piped natural gas would replace Compressed Natural Gas. Compare 12/23/13 Order Finding 221 at p.49 with AARP Cross Exhibit 44, Simollardes testimony 6/22/15 pp.235-238 and Hopkins testimony 6/23/15 pp.259-160. , No reasonable reader of the Board's Order of December 23, 2013 would dispute that these changes have the *potential* for significant impact with respect to criteria of 248(b)(2) and (b)(4) and on the general good of the state under criterion 248(a). Dr. Dismukes' May 8, 2015 testimony and May 27, 2015 rebuttal testimony address, in detail, the potentially devastating impacts of these changes on these criteria. Dr. Hopkins' prefiled testimony questions whether the impacts will be as severe as Dr. Dismukes IMPLAN modeling predicts but he does not dispute markedly reduced benefits. It is the *potential* for impact on the criteria that triggers the need for permit amendment, not whether the Board believes there is adequate proof of *actual* impacts[3]. The Board's duty under the law therefore is to order VGS to apply for a permit amendment.

AARP's brief was not responded to by VGS or the DPS. The petition remains pending.

The MOU has little or no relevance to the CLF/AARP petition. Whether the new rate base is $134 million or $154 million, the changes in the project raise undeniable *potential* for impact upon the statutory criteria. VGS is proceeding unlawfully by failing to obtain an amended CPG.

The second request for relief was filed by Ms. Lyons and the Palmers on July 21, 2014 in response to the July 2, 2014 notice of the first cost increase. It asked that the Board exercise its authority under 30 V.S.A. § 209(a)(3) and § 248 to investigate the cost increase and then take any appropriate action. That request remains pending.

The MOU has little or no relevance to the requests submitted by Ms. Lyons and the Palmers, since the cost increase at that time was $13 million less than the $134 cap proposed in the MOU.

The third motion is that which was filed by the DPS on December 22, 2014, under Rule 60(b), seeking reopening of the December 23, 2013 ruling.

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[3]"Consequently, we agree with the DPS that, under the second step of the substantial change analysis, the issue is whether the change in the project has the potential for significant impacts, and not whether the change has actual impacts…. We can determine whether the changes *actually* comply with the criteria only in a Section 248 proceeding." 170 P.U.R. 4th 94-95.

The fourth request is the set of motions filed by AARP and Ms. Lyons under Rule 60(b)(2) on January 12, 2015. The motions addressed two areas of newly discovered evidence, and sought reopening of the October 10, 2014 ruling. The October ruling had acknowledged the growing effectiveness of cold climate heat pumps but had ruled against reopening the case in part on the grounds that heat pumps would not provide the benefit of transitioning Middlebury businesses off of oil and propane. The October ruling also had accepted VGS' witness testimony that $121.6 million was a reliable cost estimate that had been prepared using improved cost-predicting methods not previously available to the company. But in December of 2014, VGS and NG Advantage had announced that they were providing CNG to businesses in Middlebury and in December VGS had revealed that the project cost had risen to $154 million.

The MOU does not address the issues raised in the January 12, 2015 motions. It does not respond to the fundamentally changed GHG and economic benefit values of the project now that VGS has constructed and placed in operation CNG facilities in Middlebury. It does not address whether the Board would have made a different decision in October if it had known in October that CNG was planned for Middlebury and that project costs were going to continue to escalate because, contrary to VGS' testimony, reliable cost-estimating methods had not yet been adopted.

The fifth, sixth and seventh motions are requests for relief filed by AARP and Ms. Lyons based on the evidence which arose during the June 22 and June 23 hearings. The evidence demonstrated mistake by the Board under Rule 60(b)(1), misrepresentation by VGS under Rule 60(b)(3), and newly discovered evidence under Rule 60(b)(2). Reopening of the October 10, 2014 and December 23, 2013 orders was sought. These motions, filed on July 8, 2015, summarized some of the new facts which had arisen about VGS' knowledge and conduct at the time of the first remand hearing in September of 2014:

> Now the Board knows that before it issued its Order on October 10, 2014 PWC had informed Vermont Gas that they had doubts about the reliability of the cost estimate Vermont Gas had been using, which Vermont Gas had assured the Board were reliable. Now the Board knows that after the hearing, Vermont Gas installed CNG facilities in Middlebury, so the introduction of heat pumps to residential customers will not leave Middlebury's commercial and industrial users reliant on oil. And now the Board knows that, in fact, the cost estimates provided by Vermont Gas Systems were wrong, by $33 million.

Unlike the newly-discovered-evidence motion, the motions under (b)(1) and (b)(3) did not require proof that a different decision probably would have resulted from the new evidence. The standard under Rule 60(b)(3) is whether AARP and Ms. Lyons were deprived of the opportunity to fully and fairly litigate their claims because of VGS's nondisclosure of information it had a duty to disclose.

The motions also asked for reopening of the December 23, 2013 on the grounds of newly discovered evidence:

> … The project was approved on the understanding that gas would be 40% less expensive than oil and propane. Now the differential is 25%....The project was approved prior to introduction of cold climate heat pumps. Now, heat pumps are cost-competitive with gas and the legislature has made their promotion into state policy… The project was approved of on the basis that the Middlebury area commercial and industrial entities such as Agrimark would continue to burn expensive greenhouse-gas producing oil unless the pipeline were constructed; nearly half of the project's projected use would be for those commercial and industrial customers. Now those customers have access to Compressed Natural Gas… CNG costs them roughly 75% more than piped gas would cost them (Rendall testimony 6/22/15 p.70) -- but substantially less than the cost of oil per BTU which was the basis of the Board's Order in 2013, and with the same alleged greenhouse gas benefits as piped gas... Neither Vermont Gas nor the Department analyzed the NPV of the project with CNG as the baseline, but Dr. Dismukes testimony revealed that Dr. Hopkins' also had performed spreadsheet analyses which used CNG in Middlebury as the baseline, and Dr. Hopkins' calculations confirmed his own calculations of an NPV well below zero… And the cost of the project has ballooned from $86 million to $154 million, a cost no one predicted or hinted at during the initial proceedings.

The eighth requests for relief were field by the Palmers. On October 2, 2014 they sought relief

from the 12/23/13 Order under Rule 60(b)(2), (b)(3) and (b)(6). They alleged newly discovered facts and misrepresentation. They filed again for relief on December 23, 2015.

The MOU does not address whether VGS withheld information that was material to AARPs' and Ms. Lyon's then-pending motions. The MOU does not address whether the Board had been mistaken in ruling in October that VGS' witnesses had presented reliable testimony about cost. The MOU places a $134 million cap on rate base addition but the MOU does not address whether newly discovered evidence about the changed economics of the project requires reopening of the December 23, 2013 ruling with or without the $134 million cap.

3. THE RECENT TESTIMONY CONFIRMS THE NEED TO RE-OPEN

EVIDENCE ABOUT THE OVER & UNDER DISPUTE CONFIRMS THAT VGS SUBMITTED MATERIALLY MISLEADING INFORMATION TO THE BOARD AND THE PARTIES IN SEPTEMBER OF 2014

On September 26, 2014, Ms. Simollardes was asked whether reported price increases in "pipeline construction cost" would affect this project. Her answer was "the majority of this project is far different. We have most of the landowners under contract. The engineering has been completed. The HDDs are under contract….." (p.94). She was then asked whether VGS' contracts include "price ceilings or other mechanisms to ensure that costs don't increase." Her answer was: "There is a lot of different contracts out there. So I cannot make a generic statement like that. I know that the ECI contract is a fixed price per drill." She was then asked whether VGS contracts require performance bonds or other mechanisms to ensure that "contracts are completed at the price agreed." Her answer was "I don't know. I think I – I don't know." (p.95)

Mr. Gilbert testified that as of that date "we do have some better information on what the cost of the pipe is, on the contracts with contractor, on the, you know, on the bids we have had."

Then he was asked the same question Ms. Simollardes had been asked. "To your knowledge are any of the construction prices that you've incorporated into the July 2 filing based on fixed price contracts?" (p.129). He answered "As Ms. Simollardes said, I believe the ECI contract is."

No one brought to the attention of the Board or the parties that the single largest contract, for $45 million in mainline construction, was a fixed price contract. This answer would have been directly responsive to the question. And no one brought to the attention of the Board or the parties that VGS had authorized Over & Under Piping Contractors to commence work under that $45 million fixed price contract before the contract was signed, that Over & Under had begun the work on June 26, 2014 and was working right up to the September hearing date – and that throughout this period Over & Under "failed to comply with its obligation to act in good faith to finalize and execute" that written contract. Exhibit AARP Cross V, ¶ 19. Not surprisingly, six weeks later VGS terminated its $45 million fixed price contract with Over & Under. AARP Cross V, ¶ 19. VGS was left with no mainline contractor until a year later.

Given that the entire cost of the project as initially represented to the Board was $86.7 million, neither the President nor the Vice-President of the company could have been unaware of the existence of the $45 million contract. The purpose of their testimony was to assure the Board that project cost uncertainty had been reduced. When asked if there were any fixed price clauses or similar mechanisms, they mentioned that one contractor, ECI, did sign such a clause. They neglected to mention that the contractor which had successfully bid for mainline construction -- which was *$45 million of the $121 million* in costs predicted at the time -- had refused to sign the fixed-price contract that VGS thought had been accepted months earlier, and had been constructing the pipeline for three months nonetheless.

At the same hearing at which Mr. Gilbert and Ms. Simollardes failed to mention the $45 million

contract dispute, they also did not disclose that the experts they had brought in, whose expertise they had urged the Board to accept, had found significant cause for concern that the $121.6 million figure was wrong. Mr. Roam of PriceWaterhouseCooper "realized" the project cost was going to cost "quite a bit more" than $121.6 million. See 6/22/156 Tr. pp. 110-112 (denying that he had no clue that the cost was going to be quite a bit more by September, and then agreeing that he did "realize" it would be "quite a bit more" in September) and 6/23/15 Tr. p. 16 (Ms. Simollardes agreeing with Mr Roam). He felt it was important enough for him to tell Mr. Sinclair. But VGS did not tell the Board.

Both the Over & Under dispute and Mr. Roam's testimony constitute newly discovered evidence that existed at the time of the tribunal's decision in October of 2014 but through due diligence was not known the parties at the time. Wright Miller & Kane's 11 Federal Practice and Procedure, Civil § 2889 (3rd ed., 2015) states that the newly discovered evidence rule has proved "especially" useful "when newly discovered evidence calls into question the validity of the judgment by directly refuting the underpinnings of the theory which prevailed." The theory which prevailed on October 10, 2014 was that "We find that there is a reasonable basis to conclude that the revised cost projections are reliable."

This evidence also demonstrates that relief should be granted under V.R.C.P. 60(b)(1), for mistake. In Murphy v. Tax Department, 173 Vt. 571, 573 (2001), in the Superior Court had initially granted judgment to Murphy based on grounds of estoppel. Later the Tax Department moved under Rule 60(b)(1) for relief from the judgment on grounds of mistake, because the facts supporting one of the elements of estoppel had been mistakenly represented to the Court. No one claimed bad faith or misrepresentation, just factual error. The Superior Court granted the motion and the Supreme Court affirmed. A mistake by the tribunal, based on erroneous information,

suffices.

Here the Board relied on VGS's representations to it that have turned out to be erroneous. On October 10, 2014, the Board summarized AARP's and Ms. Lyons' arguments that the record showed that more cost increases were likely, and rejected them. "We find that there is a reasonable basis to conclude that the revised cost projections are reliable." The Board listed three reasons for this conclusion. "First, many of the cost elements in the revised budget are no longer projections, but reflect actual costs." Second, the revised budget included a contingency. Third, Mr. Gilbert had "testified under oath at the September 26th hearing that the project is now under new management that is capable and is producing reasonable cost projections." October 10, 2014 Order pp. 20-21.

The Board was mistaken on at least the first and third grounds. While many of the items in the revised budget were no longer projections, the single largest item, mainline construction, was still a projection (at best). The revised budget did contain a contingency, but the contingency was based on Ms. Simollardes' erroneous belief that VGS' method of estimating costs was reliable – and the Board now knows, from Mr. Roam's testimony, that the method was unreliable. And while the project was under new management, old management had been responsible for the $121.6 million estimate. AARP and Ms. Lyons had unsuccessfully argued in their post-hearing memorandum dated October 2, 2014 that this was true, but the Board disagreed – and now the Board knows that AARP and Ms. Lyons were correct, from Mr. Roam's testimony in June of 2015. The $121.6 million prediction had not been produced using Mr. Roam's methods. He did not commence to use his cost-predicting methods until the fall and winter of 2014, which resulted in the $154 million prediction. He voiced his concern to VGS that the VGS cost estimate was unrealistic but VGS kept his disclosure from the Board and the parties. The Board should now grant relief under Rule

60(b)(1) as well as (2).

The Board should also grant relief under Rule 60(b)(3). Rule 60(b)(3) eliminates the task of attempting to determine whether, if the error had not been made, the Board's ruling would have differed. The question is whether VGS had a duty to disclose in September the Over & Under dispute and Mr. Roam's concern that the $121.6 million figure was unreliable. Revelation that the $45 million contract was in dispute, and that Mr. Roam did not have faith in the $121 million figure, were powerful facts that fell within the arguments AARP and Ms. Lyons already were presenting. The size of the unsigned, disputed and therefore no longer fixed-price contract would have been useful to disprove the testimony that costs were mature and largely known. And, if Mr. Roam's realization had been disclosed, AARP and Ms. Lyons would have been much better able to argue that the same team that had prepared the initial $86.7 million cost estimate, who were *not* using Mr. Roam's industry-standard methods, had developed the $121.6 million estimate and were wrong. Nondisclosure was unfair and it severely handicapped AARP and Ms. Lyons.

VGS' TRUSTWORTHINESS IS A RELEVANT ISSUE

Commissioner Recchia included in his prefiled testimony his belief that the Board's and the public's confidence in VGS is relevant to the decisions before the Board. PFT p.4

The Board explicitly relied on VGS to carry out its commitment to abide by the standards in Mr. Berger's prefiled rebuttal testimony, at page 6. 12/23/13 Order Findings 264-265. The company has betrayed that trust. See footnote 2, above, summarizing AARP Cross Exhibit O. The company's breach of trust potentially impacts every section 248 criterion, including the general good of the state, and how the company would manage the upward pressure on rates that would result from this project.

THE PROJECT SHOULD STOP WHERE IT IS

The first eleven miles of the project serve existing customers by providing added reliability. 12/23/13 Order Findings 237, 239. Assuming this work is shown to be prudent, used and useful, it would be fair to include consider inclusion of these costs in the rate base of existing customers.

The same cannot be said of the remainder of the project. When asked what direct benefits completion of the project would provide to existing ratepayers, Commissioner Recchia stated that adding more customers would be a benefit to existing customers, and that the general good would be served. 12/9/15 transcript pp.129-130.

DR. HOPKINS WAS UNAWARE OF BOARD PRINCIPLES

The Board's precedents and Rule 5.408 mandate that before significant changes are made to a project, it cannot lawfully proceed forward without a revised § 248 permit. Significant change in cost is one such change. See AARP's July 8, 2015 Post-Hearing Memorandum. VGS has insisted on proceeding forward with its significantly changed project without seeking a revised permit.

The Board's precedents also impose a duty on every holder of a § 248 C.P.G. to monitor, review and assess whether the permitted project continues to be in the best interests of ratepayers and terminate the project if continuation would not be in the best interests of ratepayers. This principle has been vigorously defended by the Department and adopted by the Board. See, e.g., Re: Green Mountain Power, Docket No. 5983, Feb. 27, 1998 Order, 184 PUR 4th 1.

The importance of this principle has been highlighted by the Board in its rulings on sharing of the costs of abandoned investments. In order to encourage utility managers to review and if appropriate abandon investments that have already been made, the Board generally places half of the costs of the terminated project into rate base. In re Tariff Filing of Central Vermont Public

Service Co., Docket 6460, 6/26/01 at p. 23; Re Central Vermont Public Service Corp., Docket 5132, Order entered May 15, 1987.

The position of Dr. Hopkins, on behalf of the Department, is that once a C.P.G. is granted and investments are made, it would not be reasonable to reconsider the decision in light of new information. He testified he was unaware of the Board's precedents that adopt a contrary view. 12/9/15 transcript pp.118-119. If his view were to be accepted, years of precedent and the plain meaning of Board Rule 5.408 would be undermined – and undermined in order to support the continuation of a project for which cheaper, greener alternatives are already available.

CONCLUSION

The Federal Energy Regulatory Commission generally does not allow gas company service territory expansion to be subsidized by existing customers. Certification of New Interstate Natural Gas Pipeline Facilities, Order Clarifying Statement of Policy, 90 FERC ¶ 61,128 (Feb. 9, 2000). If the company must rely on existing customers to meet its rate of return while expanding, the expansion does not deserve to be approved. In Vermont, the Board has made exceptions to this principle but never has an exception been proposed or adopted that is as extreme as what continued permitting of this project would require. What appeared to be a reasonable extension of Board precedent, in 2013, when the Board stated that it appeared unlikely that it would take a full 20 years for the new service territory to carry its own weight, has snowballed into a project that cannot carry its own weight for 32 years. And it has grown to this size at the same time as the benefits of the project have plummeted, from saving large amounts of GHG to saving none.

Dated at Bristol, Vermont, this 17TH day of December, 2015.

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