STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Investigation Pursuant to 30 V.S.A. §§ 30 and 309 regarding the alleged failure of Vermont Gas Systems, Inc. to comply with the Certificate of Public Good in Docket 7970	)	
	)	Case No. 17-3550-INV
Notice of Probable Violations by Vermont Gas Systems	)	Case No. 18-0395-PET

INTERVENORS' MOTION TO ALTER OR AMEND, AND INTERVENORS' OBJECTION TO FINDINGS BASED ON COUNSEL EINHORN'S HEARSAY LETTER

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Intervenors move pursuant to Commission Rule 2.221, Vermont Administrative Procedure Act §§ 809(a), 809(b), 809(c), 809(g), 810(1), 810(3), 810(4), and 812(a), and the due process protections of Chapter 1, Article 10 of the Vermont Constitution and the Fourteenth Amendment. to alter or amend the Board's April 6, 2023, order so that it is based on the record evidence and the record pleadings, is accurate, and only addresses issues as to which fair notice was provided.

Pursuant to footnote 51 on page 17 of the order, Intervenors also object to Supplemental Findings 1 and 7 and object to admission of Attorney Einhorn's letter into the record.[1]

MEMORANDUM OF LAW

Intervenors recognize the care and time that the Commission has applied to this matter from its outset in 2017 but are compelled to respectfully submit that the Commission has made salient errors in its recent ruling. Because these errors have prejudiced Intervenors, and because

[1] Counsel for Intervenors has previously informed the Commission that he is unavailable April 17-21 because of a trial in the Environmental Division of the Superior Court, and is unavailable from May 2 through May 18 because of a vacation out of the country.

Intervenors have had no opportunity to address these errors prior to seeing them in the ruling, Intervenors raise these issues now.

1. Corrosion Engineering, According to Mr. Byrd, May Not Be a Licensed Specialty, Which is Why Intervenors Have Not Challenged the Lack of Engineer Signoff on the Cathodic Protection Plan – But No Witness Disputed Mr. Liebert's Testimony that AC Mitigation is Electrical Engineering, Which Is a Vermont Licensed Specialty

Mr. Byrd testified that Corrosion Engineering may not be a licensed engineering specialty in Vermont, which is why Intervenors have not argued that the Issued for Construction *Cathodic Protection Plan* lacks an engineers' approval. Mr. Liebert's testimony was uncontradicted regarding the Issued for Construction *AC Mitigation Plan*—AC Mitigation is pure Electrical Engineering, a recognized Vermont engineering specialty. Liebert PFT pp.4-5; Liebert Ex. 3 pp.1-2; Liebert Rebuttal PFT pp.1, 2, 5. The Commission's order incorrectly cited Mr. Byrd's statement about *Corrosion Engineering* to excuse the lack of a licensed engineer's signature on the Issued for Construction Plans for *AC Mitigation*. Order p. 10, fn. 28.

The discussion of this issue on page 10 and in footnote 28 are without basis in the record and are contradicted by the record. Similarly Supplemental Finding 13 is without basis in the record, and is contradicted by the record, because it finds that the ANGP will be safe if VGS "continues" to ensure that the construction is overseen by a Vermont-licensed engineer, including signing of all construction drawings and specifications. The Issued for Construction AC Mitigation Plan has never been signed by any engineer, much less a Vermont-licensed engineer. As to AC Mitigation, there is no written approval to "continue."

To be as clear as possible on this critical issue of public safety that affects 27.2 miles of the ANGP[2], Intervenors note that the Issued for Construction AC Mitigation Plan addresses three principal *electrical* risks. The first electrical risk arises from *capacitive coupling*. The AC Mitigation plan, Byrd Attachment 30, stated (p.10) that an above-ground pipeline near or parallel to a high voltage line can experience capacitive coupling that would cause the electrocution of personnel or ignition of volatile liquids with resulting explosions. The ARK Issued for Construction plans set forth mitigation designs to control capacitive coupling, such as grounding. Electrocution of personnel and ignition of volatile liquids, and the designed remedy, have nothing to do with Corrosion Engineering. They are purely electrical risks and purely electrical remedies. No licensed engineer has signed these electrical engineering plans.

The Issued for Construction AC Mitigation Plan discussed a second electrical danger, *inductive coupling*. This danger continues throughout the life of the pipeline. The entire length of a pipeline that is adjacent to or parallel to the high voltage line is at risk. The risks of inductive coupling include: destruction of insulated junctions; piercing of holes in lengths of pipeline coating; puncturing of pipeline walls; harm to cathodic protection devices, communications equipment and monitoring equipment; shocking of personnel who touch the pipeline or any systems or equipment connected to the pipeline—and also accelerated corrosion. The Issued for Construction plans contained mitigation measures to control inductive coupling. These measures pertained to fundamental aspects of pipeline design, such as the length of each section of the pipe, and grounding of the pipe. While accelerated corrosion is one of the

[2] Twenty-seven miles of the 41-mile long gas transmission line either lie within the right of way of a high voltage line or lie immediately adjacent to it. Docket 7970 Final Order, Findings 10, 180.

consequences of inductive coupling, it is just one of many others,[3] such as electrocution, and the cause and the remedy are both electrical in nature. Byrd Attachment 30, pp. 10-12; Liebert Ex. 3 pp.1-2. No licensed engineer has signed these electrical engineering plans.

The ARK AC Mitigation Plan discussed a third electrical risk, *conductive coupling*. This risk also arises throughout the life of the pipeline. Conductive coupling may cause electrical shocks to persons who touch an appurtenance to the pipeline. That person could be a VGS employee, a VELCO employee, a hunter, a birdwatcher or a child exploring the outdoors. Conductive coupling and shocking those who touch a pipeline appurtenance have nothing to do with Corrosion Engineering. The ARK Issued for Construction AC Mitigation Plan sets forth designs to mitigate this risk. Byrd Attachment 30, pp. 12-13. These too remain unsigned.

ARK Engineering's *other* Issued for Construction plans, those for the Cathodic Protection design, exclusively address prevention of corrosion of the ANGP steel pipe. Byrd Attachment 29.

2. The AC Mitigation Plan Was Not Prepared by CHA, Remains Unsigned and Was Not Found to Have Been Accomplished by the Hearing Officer

Defective AC Mitigation can result in electrocution of employees or members of the public, sudden destruction of the pipeline, and other severe consequences, as summarized above. The Issued For Construction AC Mitigation Plan was not signed by CHA's Mr. Hollowood or any other engineer, in 2018 or at any other time. The Issued For Construction Plan for AC mitigation was prepared by ARK Engineering & Technical Services, Inc.. No licensed engineer from ARK

[3] Corrosion is mentioned on ten of the Issued for Construction AC Mitigation Plan's 268 pages.

and no other engineer has signed the ARK plan. Liebert Testimony pp.4-5; Liebert Ex. 3 pp.1-2; Liebert Rebuttal Testimony pp.1, 2 5.

The April 6 Order erroneously suggests that the Issued for Construction AC Mitigation Plan was signed by a licensed engineer (Supplemental Findings 12-13). These findings cite to CHA's statement that CHA's engineers have signed all of CHA's plans. Because CHA did not prepare the Issued For Construction AC Mitigation Plan, CHA's statement does not support a conclusion that the Issued for Construction AC Mitigation Plan was signed by a licensed engineer. The evidence is uncontradicted that this Issued For Construction Plan remains unsigned to this day.

The April 6 Order at page 10 also erroneously states that the Hearing Officer's Liability Order had found that the Mitigation Plan was "effectively accomplished." This statement is supported by footnote 26. Footnote 26 refers to Liability Order p. 43. Page 43 does not state that the AC Mitigation Plan has been effectively accomplished. Pages 42 and 43 set forth findings about *corrosion protection* and conclude with a Discussion on page 43. The Discussion concludes that the *corrosion protection* addressed in the CPG has been adequately accomplished, including the zinc ribbon corrosion protection element of the AC Mitigation Plan. As discussed above, corrosion protection is one of many critical parts of AC Mitigation. Avoidance of electrocution of personnel and members of the public, avoidance of ruptures of the pipeline, and many other non-corrosion measures also are part of the AC Mitigation Plan. The Liability Order does not state that these measures have been effectively accomplished. More importantly, the Liability Order does not find that the Issued for Construction Mitigation Plan was signed by a licensed engineer. There is no basis in the record for any finding or conclusion that it has been.

3. Intervenors Agreed that the Byrd Investigation Found the Zinc Ribbon; the Commission's Order Incorrectly Cites the Agreement that the Zinc Ribbon Had Been Located As Proof that Intervenors Conceded that the AC Mitigation Was Safe, Even Though Intervenors Consistently Argued that the Unsigned AC Mitigation Plan Is a Public Safety Risk

Intervenors never agreed that the AC Mitigation in particular or the ANGP in general is safe; they agreed that the zinc ribbon which is one component of AC Mitigation had been located in the ground, which initially had been in question.[4] The Commission's order, however, cites that admission as proof that Intervenors had conceded that the AC Mitigation is safe. See p.10, text accompanying footnotes 26 and 27. Footnote 27 of the April 6 order cites to the Liability Order at p.43 for this concession, and page 43 of the Liability Order correctly refers to the zinc ribbon and to Intervenors' agreement that the zinc ribbon had been located, not that the AC Mitigation system is safe.

Intervenors' recognition that the zinc ribbon had been found was not recognition that the pipeline is safe or that the AC Mitigation is safe. Intervenors repeatedly argued that the pipeline is unsafe because no engineer has signed his or her approval of the Issued for Construction AC Mitigation Plan, quoted the National Transportation Safety Board report Safety Recommendation Report, Natural Gas Distribution System Project Development and Review (Urgent), November 14, 2018, Liebert Exhibit 2, and quoted Mr. Liebert's testimony that it is astounding that this risk has not been addressed. Liebert PFT p. 4; Liebert Rebuttal PFT pp.1-3; Intervenors' Corrected Proposed Findings of Fact and Conclusions of Law, January 10, 2022 p.20. The NTSB determined that the loss of life and property damage from the Lawrence Massachusetts explosion was caused by the failure of a licensed engineer to sign off on the

[4] See, e.g., Intervenors' February 28, 2018 Motion to Broaden Scope p.28.

construction plans, exactly what has occurred here with regard to the safety of 27.2 miles of the ANGP. The fact the Mr. Byrd found the zinc ribbon cannot substitute for the continued absence of written approval by a licensed engineer of the Issued For Construction AC Mitigation Plan.

The Commission also incorrectly asserts that Intervenors' argument that engineer sign-off is necessary to protect public safety is "unsupported." P.10. Intervenors respectfully state that this argument was abundantly supported and that the Commission's summary of the evidence is erroneous. The National Transportation Safety Board reached exactly this conclusion, in the report cited above, Liebert Exhibit 2. Mr. Liebert's testimony introduced the exhibit and explained why it applies to the Issued for Construction AC Mitigation Plan. No witness disagreed with the NTSB or with Mr. Liebert that failure to obtain licensed engineer sign-off on a natural gas pipeline is a *per se* safety risk. No engineer disagreed with Mr. Liebert that the Issued For Construction AC Mitigation Plan is vital to public safety and remains unsigned.

4. Notwithstanding the Breadth of the Commission's Opening Order, the Commission's Hearing Officer Later Ruled that the Proceedings Would Only Address the *Potential* for Harm and that a Separate Proceeding on Permit Amendment Would be Needed If that Potential Had Been Shown, Which Ruling Intervenors Properly Relied Upon

The Commission's April 6 Order points to its opening order as broad enough to include any future remedy the Commission might adopt, such as permit amendment. However, the April 6 order fails to recognize that the Commission's Hearing Officer subsequently interpreted the opening order in the light of Commission Rule 5.408 and Commission precedent to mean that the hearings would only address the *potential* for harm to statutory criteria, and, if that potential were shown, that a separate proceeding would be needed in which VGS would apply for an

amended permit and address whether the statutory criteria could be met. Liability Order pp.10-12.

In keeping with his understanding that this proceeding was addressing only the potential for harm, not whether an amended permit should be granted, the Hearing Officer issued an order finding that there had been six substantial changes (listed as five, because two were combined), and setting this matter for a hearing on what remedies to impose. The six substantial changes were composed entirely of changes that raised the *potential* for harm:

1) VGS constructed the pipeline in a rare and irreplaceable natural area (the Clay Plains Swamp wetlands) by means of a construction method that departed from VGS's testimony and the Commission's order, thereby *potentially* harming the wetlands values protected by § 248(b)(5) (1/29/21 Order pp.17-21).

2) VGS buried the pipeline in the Clay Plains Swamp wetlands within the VELCO right-of-way contrary to VGS' testimony in support of its CPG application and contrary to the Commission's order approving the ANGP, which established that the entire pipeline would be constructed at least 3 feet deep and that within the VELCO right of way a larger margin of safety would be attained by burial at least 4 feet deep—*potentially* affecting §§ 248(b)(2), (3), (4) and (5). (1/29/21 Order pp.21-28)

3) VGS laid down the pipe directly on trench bottom in several locations, contrary to its filed plans and the Commission's order, *potentially* affecting § 248(b)(5). (1/29/21 Order pp.28-31)

4) VGS failed to use trench breakers at numerous wetland locations, contrary to its filed plans and the Commission's order, *potentially* affecting § 248(b)(5). (1/29/21 Order pp.28-31)

5) VGS did not compact soils at road crossings, contrary to its testimony, the Commission's order and its construction plans, *potentially* affecting § 248(b)(5). (1/29/21 Order pp.31-33)

6) VGS constructed the entire ANGP by means of Issued for Construction plans that had not been signed and approved by a licensed Vermont engineer, contrary to VGS's testimony and the Commission's order, *potentially* affecting §§ 248(b)(2), (3), (4) and (5). (1/29/21 Order pp.38-40.)

The Hearing Officer did not find that any of the six substantial changes would harm or had harmed § 248 criteria such as safety; he found that these departures had created the *potential* to harm statutory criteria. He ordered the next phase of the case to address what to do about these substantial changes—not to address whether an amended permit should be granted based on proof of harm or proof of lack of harm. Whether the amended project satisfies § 248 would be addressed in a separate proceeding. Intervenors in this proceeding, therefore, had no reason to attempt to introduce evidence that no permit should be granted, or that an amended permit should be granted only on specified terms.

This matter is not meaningfully distinguishable from the recent *Guilford* case:

> The hearing officer was not directed to develop evidence to support an amendment or make a recommendation as to whether the Project as built was in the public good. Furthermore, we will not direct the hearing officer to sift through the evidentiary record for one project in an attempt to distill a different evidentiary record to support an amendment to a completely different project; nor would we impose such a burden on a member of the public interested in the details of the Project as built.
>
> If Soveren wishes to retain its CPG, it must petition for an amendment and show that the as-built Project remains in the public good…

Investigation pursuant to 30 V.S.A. §§ 30 and 209 and Public Utility Commission Rule 5.110(C) into alleged lack of adequate notice and violations of certificate of public good # NMP-7438 concerning the construction of a group net-metered solar electric generation facility in Guilford, Vermont, Docket No. 8843, Order re: Proposal for Decision, March 27, 2018, 2018 Vt. PUC LEXIS 69 at 23.

If the Hearing Officer was incorrect, Intervenors were justified in following his lead and respecting his rulings. Whether the Commission has changed the course of these proceedings or has corrected the course of the proceedings, long after the evidentiary record has closed, the

result is the same. The April 6 order violated 3 V.S.A. §§ 809(a) (right to reasonable notice), 809(b)(4) (right to a short and plain statement of the matters at issue), 809(c) (right to opportunity to respond and present evidence and argument on all issues involved) and the constitutional right to due process. *In re Petition of Burlington Electric Department*, 149 Vt. 300, 303-304, 542 A.2d 294 (1988) (reversed because Board order resolved an issue that the parties had been denied an opportunity to address); *In re Green Mountain Power Corp.,* 131 Vt. 284, 293, 305 A.2d 571, 577 (1973) ("[T]he parties [must be] given an adequate opportunity to prepare and respond" to the controlling issues.); *In re Cornell*, 111 Vt, 525, 529, 18 A.2d 304) (1941) (due process under Article 10 requires "sufficient notice and opportunity to defend"); *Goss v. Lopez*, 419 U.S. 565, 583, 95 S.Ct. 729, 740. 42 L.Ed. 2d 725 ("effective notice" is essential to due process of law in administrative proceedings under the Fourteenth Amendment).

The Hearing Officer set forth important public policy reasons why, in this case, it would be inappropriate to issue an amended CPG, and the April 6 ruling validates his reasoning. The Hearing Officer wrote that VGS and the DPS argued in their post-hearing reply briefs that it would be more efficient to issue an amended CPG but neither party submitted specific language for any amendments. PFD pp. 18-20. Likewise, the Commission's April 6 order lacks any specification of the amendments. The parties are left to their own devices to infer what the amendments consist of. Intervenors and the public cannot be protected by, and VGS cannot be held to the terms of, a permit the contents of which have been left unstated. The Commission has asked for compliance filings but the terms of what must be complied with cannot be found in the ruling.

The Hearing Officer also wrote that in cases where the proceedings were combined the applicant sought the Commission's ruling before taking the law into its own hands and making the changes. The Hearing Officer pointed out that in this case all of the substantial changes occurred before the utility brought even one change to the Commission's attention by filing a nonsubstantial change request. VGS waited until after it had gassed up the pipeline and was delivering gas to customers before doing so. Authorizing a retroactive permit amendment in this factual setting—without having provided notice under § 248(a)(4)(C) and (D) to affected landowners, abutters, towns and other statutory parties that the Commission is considering relaxing or waiving compliance with one or more of the existing CPG terms that govern the safety—would reward VGS's misconduct, encourage other permit-holders to act first and seek approval afterwards, and irretrievably harm the public's trust in the § 248 review process.

The April 6 order does not address the Hearing Officer's sound reasoning. The Commission stated only that in this case there is a sufficient record to evaluate the proposed permit amendment. That there is, in the Commission's view, a sufficient record does not address the Hearing Officer's points that the retroactive permit rewards VGS's misconduct by avoiding the statutory review process, incentivizes other utilities to follow suit, and harms' the public's trust in the § 248 review process.

The April 6 order also misses the central purpose of statutory notice—the public process can lead to a different outcome. Towns, regional planning commissions and landowners have often retained counsel and experts and have influenced or changed the outcome of § 248 proceedings, including the initial permitting of the ANGP. Intervenors respectfully submit that

the Commission possesses neither the omniscience nor the legal authority to rule, based on what appears to be a sufficient record, that the statutory process is not needed.

This is particularly true where a utility has acted first and sought approval afterwards. Where the scrutiny that the legislature intended to be generated by statutory notice to towns, regional planning commissions and affected landowners has not occurred, as here, a utility that has breached its permit can more readily prepare what *appears* to be a sufficient record to justify what it has done. The utility has every reason to circumvent a public process. The public has every reason to insist on a public process.

In this case, towns, regional planning commissions and the owners of land which the ANGP traverses or adjoins have never been given fair notice that VGS or the Commission is seeking to amend the CPG or what the amendments consist of. The only notice they received was that the Commission was reviewing whether the CPG had been violated and if so what to do about it—which is a far cry from ruling on whether to grant an amended permit application and knowing what the proposed amendments consist of.

Even if towns, regional planning commissions and landowners were following these proceedings via ePUC, they too would have read the Hearing Officer's ruling that this proceeding would *not* determine whether an amended permit would be issued. Until they read the April 6 order, they too had no reason to believe that the Commission would be approving permit amendments in this case.

Intervenors therefore ask that the Commission amend its order to require that VGS submit an application for an amended permit, setting forth what the amendments consist of, and provide notice of those proposed amendments pursuant to § 248(a)(4)(C) and (D). The hearings

on the amendment may occur within this docket number or a new docket number but only after statutory notice. Intervenors, and perhaps many others, will then respond to the proposed amendments to the CPG through pretrial discovery, cross-examination, witness testimony and argument.

In the event that the Commission decides not to require statutory notice, Intervenors request that the Commission either specify what the changes are or order VGS to do so and set this matter for a hearing at which VGS will submit record evidence in support of the proposed amendments, and Intervenors will have the opportunity for cross-examination and presentation of rebuttal evidence and argument.

5. Objection to the Einhorn Letter About the Sink-in-Swamp Method

Intervenors object to the use of Mr. Einhorn's letter and object to the incorrect characterization of what the letter stated.

The April 6 ruling finds that the June 19, 2017, letter stated that ANR had no concerns about use of the sink-in-swamp method. The June 19, 2017, letter did not address the sink-in-swamp method. The letter stated that ANR had no concerns about the change set forth in Attorney McClain's June 2, 2017, nonsubstantial change letter. The June 2, 2017, nonsubstantial change letter addressed only depth of burial. The June 2, 2017, letter referred to a changed "method" but the only change was the depth of burial.

Mr. Bubolz' deposition revealed use of the sink-in-swamp method. His deposition did not occur until December 9, 2017. Bubolz Deposition p.1.

Intervenors ask pursuant to Rule 2.221 that Finding 1 on page 17 be amended to state that the June 2, 2017 letter stated that ANR had no concerns about depth of burial. If the finding is not

amended as requested, Intervenors ask pursuant to Rule 2.221 and 3 V.S.A. §§ 809 and 810 that an ANR witness be made available for cross-examination, with supporting documents, and that Intervenors be allowed to submit rebuttal exhibits and possibly testimony. Intervenors expect to prove that the letter was written before the deposition of Mr. Bubolz was taken and submitted into the record, along with the photographs he took when he returned to the site, and before Mr. Shelton's photographs and testimony were submitted, that ANR was unaware in June of 2017 of the "sink in swamp" means of construction, unaware that it used not one but two trenches side-by-side in the Rare and Irreplaceable Natural Area wetland, unaware that wetland soils were not segregated and then restored, and unaware that the sink-in-swamp method changed the surface topography and water runoff of the area, as shown in Mr. Bubolz's photographs.

6. Additional Objections to the Supplemental Findings

Finding 1 is incorrect as noted above. It is also merely a recitation of ANR's letter, and therefore cannot be the basis for a decision. *In re M.G.*, 2010 VT 101, ¶ 14, 189 Vt. 72, 13 A.3d 1084 (quoting *In re Hale Mountain Fish & Game Club, Inc.*, 2007 VT 102, ¶ 9, 182 Vt. 606, 939 A.2d 498 (mem.)); *Krupp v. Krupp*, 126 Vt. 511, 514, 236 A.2d 653, 655 (1967); *In re E.C.*, 2010 VT 50, ¶ 14, 188 Vt. 546, 1 A.3d 1007 (mem.).

Finding 5 is contradicted by the record evidence cited by the Commission at p.7. VGS's own engineers at Mott MacDonald advised that a one-foot buffer would help ensure that even if settlement occurs, the pipeline would remain "safe and operational." VELCO's expert witness, Carl Bodenhamer, agreed with this statement by Mott MacDonald. Tr.12/8/21 pp.30-31. Mr. Byrd himself acknowledged that the deeper that a natural gas pipe is buried, the safer it is. Byrd 9/2/20 tr.190-194; 9/2/20 tr. 208 ("deeper is better").

That buffer is gone. The buffer now is from 5 to 9 inches.[5]

Soil settlement is not a hypothetical concern in this wetland area. This site is subject to unusually frequent seasonal flooding. Prefiled Testimony of Eric Sorenson, 6/11/13 p. 20. The seasonal flooding is unusual because of its "long duration that may extend into June on typical years with occasional flooding at other times of the year." Sorenson Rebuttal Testimony 8/14/2013, pp. 15-16. If the soil settles from 5 to 9 inches, the maximum allowable stress will be reached, even for this high-strength steel pipe.

Finding 6 and the discussion of the sink-in-swamp method on pages 10-11 are incorrect. The April 6 order dismisses Intervenors' argument that safety was compromised where the pipe was laid on trench bottom because only native soils were used, thereby avoiding creation of differential oxygen corrosion. Intervenors respectfully point out that the evidence is undisputed that a second risk to the pipeline arises where the pipe is laid on trench bottom—the anti-corrosion coating on the pipe can be abraded without the protection of screened backfill under the pipe. Laying pipe directly on trench bottom means that screened backfill, *whether native or non-native*, was not used beneath the pipe. This evidence is summarized on pages 26-28 of Intervenors' Comments on the PFD. This is not a corrosion issue but an abrasion issue. The Hearing Officer correctly found that VGS had failed to separate layers of soil when using the sink-in-swamp method but failed to find that the sink-in-swamp method also omitted screening of the native backfill.

[5] The depth at which the HS20+15% load reaches 90% of SMYS is 1.7 feet. 12/8/21 tr. 68. This means that the HS20+15% load will reach the maximum allowable stress level at about 20 inches of cover. According to Mr. Byrd, the pipeline has as little as 29 inches of cover; according to Mr. Shelton's Prefiled Testimony, it has as little as 25.5 inches of cover. There is only a 5 to 9-inch margin of safety.

Finding 7, about the absence of trench breakers, is incorrect and unsupported. Mr. Byrd is a pipeline engineer. He claimed no expertise in wetlands impacts. 9/2/20 tr. 42-43. The June 19, 2017 letter from Mr. Einhorn is objected to, and it did not address trench breakers. As set forth above, it addressed only the nonsubstantial change request filed by VGS, which pertained only to depth of burial. Neither Mr. Byrd's report nor Mr. Einhorn's letter support the finding.

Finding 8 is based in part on Findings 6 and 7 and therefore is unsupported.

Findings 12 and 13 are discussed above. To the extent that they purport to address the Issued for Construction AC Mitigation Plan, they are erroneous and unsupported.

Conclusion

Intervenors ask that the Commission alter the April 6, 2023, order so that it is based on the record evidence and the record pleadings, accurately reflects the record, and only addresses issues as to which fair notice was provided.

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