

August 25, 2015

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Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street
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Re: Docket No. 7970: Phase 1 of the Addison Rutland Natural Gas Project Request for
Non-Substantial Change Determination

Dear Mrs. Hudson:

With this letter, Vermont Gas Systems, Inc. (“Vermont Gas,” “VGS,” or the “Company”) is providing the Public Service Board (the “Board”) with notice and seeking approval of additional non-substantial changes (the “Project Changes”) to Phase 1 of the Addison Rutland Natural Gas Project (“Phase 1” or the “Project”) approved in Docket 7970. Vermont Gas is making this filing at this time due to construction timing sensitivities concerning a landowner business disruption. This issue is described more fully below.

The Project Changes are primarily related to accommodating landowner requests, increasing efficiency, and/or decreasing construction risk. Each are briefly set forth below and further detailed in the enclosed attachments. The 18 Project Changes fall within the following categories:

- Six minor pipeline alignment changes;
- Four mainline valve (“MLV”) relocations;
- Seven adjustments/changes to access roads and workspace; and
- One update to natural resource mapping/impacts.

I. Overview

As would be expected with a linear project, certain changes have arisen over time, either in response to field conditions, including the opportunity for potential construction efficiencies, and/or in response to landowner requests. Vermont Gas has previously submitted two non-substantial change filings with the Board related to the first 11 miles of the Project.¹ The Project Changes proposed herein pertain to the remaining 30 miles of the Project and reflect all remaining changes of which Vermont Gas is aware, with the exception of a potential reroute in

¹ VGS filed the first request on April 3, 2015, and the Board approved it on June 12, 2015. VGS filed the second request on July 9, 2015, and the Board approved it on August 7, 2015.

response to a landowner situation.² With the exception of two locations, the proposed changes are all planned for construction next spring.

However, Vermont Gas respectfully requests timely review and approval of the Project Changes for two reasons. First, the adjustment to Access Road “S” and the route alignment changes associated with the Rocky Ridge golf course (changes PH1-19 and A-08, respectively) should be constructed this fall to comply with the terms of the Company’s agreement with the landowner to avoid business disruption. Those terms require construction between November 1 and February 28. Timely approval of this change will allow Vermont Gas to comply with the landowner agreement and avoid winter construction. Second, the ability to construct in the areas associated with the Project Changes this fall will afford the construction contractor greater efficiency and flexibility in continuing construction once the first 11 miles are completed, helping ensure that Vermont Gas can complete the entire Project by the fall of 2016, depending of course on the Board’s decision in the pending remand in this docket.

It should also be noted that to the extent any of the Project Changes require amendments to the Company’s permits from the Agency of Natural Resources (“ANR”), Vermont Gas has applied for the necessary permit amendments. Further, Vermont Gas has already applied for and obtained an amendment to its U.S. Army Corps of Engineers Section 404 permit for these Project Changes.

Vermont Gas has evaluated the potential impacts of the Project Changes and concludes that they present no potential for any significant impacts to any of the relevant Section 248(b) criteria. The Project Changes have been reviewed with both ANR and the Department of Public Service, and VGS has previewed the changes with the affected municipalities and regional planning commissions. In response to feedback provided by ANR, Vermont Gas added Attachment 2B to this filing. Additionally, Vermont Gas has reached agreement regarding the Project Changes on private property and has reviewed them with the impacted landowners. In fact, many of these proposals are in direct response to individual landowner requests. To date, no landowner concerns have been raised.³ For Project Changes on land owned or used by VELCO, Vermont Gas has approval from VELCO to implement such changes. Finally, the current Project budget of \$154 million is adequate to address these changes and no budget adjustment is necessary. Taken together, the Project Changes will improve constructability and respond to landowner requests, which VGS anticipates will reduce construction and schedule risks.

Accordingly, Vermont Gas submits the proposed Project Changes are non-substantial and improve the Project without raising substantial issues regarding any of the applicable Section 248 criteria, and respectfully requests a determination from the Board that the changes do not represent a substantial change or a material deviation from the approved Project.

² It is possible additional changes could be required in response to construction or field conditions but no other changes are proposed at this time.

³ One landowner has not yet executed the easement paperwork, but an agreement has been reached.

In support of this request, included with this letter are the following attachments:

- Attachment 1: Non-Substantial Change Summary Memorandum from John Stamatov, Project Manager, together with a Non-Substantial Change Summary Table describing each proposed change and respective rationale as Attachment 1A; orthographic mapping depicting the location of each change and showing the approved and proposed locations for the MLVs and access roads as Attachment 1B; and updated EPSC Plan Sheets as Attachment 1C.
- Attachment 2: Natural Resource Assessment Memorandum from Jeffrey A. Nelson and Joshua Sky, VHB, including an updated Natural Resource Plan set as Attachment 2A; and a change matrix cataloguing the status of ANR permit amendments as well as potential impacts upon the natural resource, aesthetic, and historic site criteria as Attachment 2B.
- Attachment 3: Aesthetics Review Memorandum from Michael J. Buscher, T.J. Boyle Associates, along with a Revised Landscape Mitigation Sheet as Attachment 3A.
- Attachment 4: Archaeological and Historical Resources Memorandum from John G. Crock, UVM CAP.
- Service List

The remainder of this letter provides the non-substantial change legal framework and analysis supporting the Company's request.

II. Non-Substantial Change Analysis

By way of background, on December 23, 2013, the Board approved the construction of the Project and issued a Certificate of Public Good ("CPG") to that effect. Condition No. 1 of the CPG states that "[c]onstruction, operation, and maintenance of the proposed Project shall be in accordance with the plans and evidence as submitted in this proceeding. Any material deviation from these plans or a substantial change to the Project must be approved by the Board."

Pursuant to Board Rule 5.408, an amendment to a CPG is required "for a substantial change" to an approved project, defined as "a change in the approved proposal 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)." Even where a revised project would satisfy the standards of Section 248 "more easily than the original design," the statute requires that the Board rather than the petitioner find that the standards are satisfied.⁴ Nevertheless, the Board has cautioned that it does not "wish to discourage petitioners from filing potential improvements to a proposed project for fear that additional procedural steps would significantly delay the proceeding."⁵ The

⁴ *Petition of Cross Pollination, Inc.*, Docket No. 7645, Order of 10/29/12 at 4; *Investigation into Citizens Utils. Co.*, Docket Nos. 5841/5859, Order of 6/16/97, at 131-33.

⁵ *Amended Petition of UPC Vt. Wind, LLC*, Docket No. 7156, Order of 10/1/07 at 8 n.5.

Board has further observed “that it is not unexpected for plans for a significant energy project to change after we issue it a CPG.”⁶

A determination as to whether a change is substantial “must be informed by the overall scope of the project.”⁷ For example, in *Amended Petition of UPC Vermont Wind*, the Board concluded that relocating two wind turbines to a different town and moving the location of several other turbines did not constitute a substantial change.⁸ Regarding subsequent set off changes to the UPC project, the Board likewise determined that relocating a substation and an operations and maintenance building and changing two access roads did not constitute a substantial change.⁹ In reaching this conclusion, the Board rejected claims that the modifications could present significant aesthetic, water quality, and wildlife impacts, relying on the expert reports submitted on behalf of the petitioner together with agency recommendations.¹⁰

The Board has reviewed a variety of project changes in past dockets and determined that they were non-substantial, including proposals to modify access roads,¹¹ relocate telecommunications tower equipment,¹² install overhead utility poles and clear vegetation in lieu of approved underground utilities,¹³ and increase the footprint of a solar project.¹⁴ In Docket 7751, the Board concluded that proposed modifications to the Ascutney Substation and associated tie line did not

⁶ *Amended Petition of UPC Vt. Wind, LLC*, Docket No. 7156, Order of 3/24/09 at 7 & n.7 (citing the Northwest Reliability Project (“NRP”) in Docket No. 6860, where “the Board reviewed and approved final design plans for various aspects of the NRP” but “did not require the petitioners to file an amended application for any of the final design plans”).

⁷ *Petition of Cross Pollination, Inc.*, Docket No. 7645, Order of 10/29/12 at 4 (citing Docket No. 7156, Order of 10/1/07 at 7-8; Docket No. 7827, Order of 6/28/12).

⁸ *Amended Petition of UPC Vt. Wind, LLC*, Docket No. 7156, Order of 10/1/07 at 7-8. While this set of changes to the UPC project were prior to CPG issuance, the same non-substantial change standard applies to pre- and post-CPG changes. Compare Board Rule 5.407, with Board Rule 5.408.

⁹ *Amended Petition of UPC Vt. Wind, LLC*, Docket No. 7156, Order of 3/24/09 at 2, 7-12.

¹⁰ *Id.* at 3, 9-12.

¹¹ See, e.g., *Petition of New Cingular Wireless PLC, LLC*, Docket No. 8272, Order of 7/8/15 at 2 (approving relocation of access road along with a sixty-foot increase in length of the road); *Petition of Champlain Valley Solar Farm, LLC*, Docket No. 8248, Order of 1/22/2015 at 2 (approving extension of existing entryway over approximately 150 feet of grass to intersect with approved access).

¹² *Petition of VTel Wireless, Inc.*, Docket No. 8216, Order of 7/9/2014 at 2 (finding revisions to tower location, concrete pad, and access road to avoid potential impacts to Class III wetland in the area were non-substantial).

¹³ *Petition of New Cingular Wireless PCS, LLC*, Docket No. 8326, Order of 6/24/15 at 2 (holding installation of eight utility poles and utility lines along previously approved access road together with a 200’ long by 25’ wide vegetative clearing for interconnection in lieu of approved underground utilities was non-substantial, noting that “[t]o the extent that the new vegetative clearing will create additional aesthetic impact, that impact will be minimal”).

¹⁴ *Petition of Bridport Solar Holdings, LLC*, Docket No. 8234, Order of 12/4/2014 at 2 (finding increase of solar- project footprint from 9.16 acres to 9.7 acres was non-substantial).

represent a substantial change to the approved Project.¹⁵ The changes consisted of relocating one approved 46kV structure to a slightly flatter area within the existing right-of-way, replacing existing structures with taller structures, and modifying the tie line configuration.¹⁶ While the taller structures would be briefly visible to the public traveling Interstate 91, the Board determined that the changes did not raise the potential for significant impacts under the Section 248 criteria, citing the opinions of the petitioners' experts and the recommendation of the Department.¹⁷

As demonstrated in the orders summarized above, where proposed changes do not have the potential to create significant impacts under the Section 248 criteria, the Board makes a determination of non-substantial change and does not require petitioners to amend their CPG.¹⁸ Such is the case here.

As explained in the Natural Resource Assessment Memorandum prepared by VHB and provided as Attachment 2, the proposed Project Changes do not raise significant issues with regards to the relevant Section 248(b) criteria. Importantly, all locations where these Project changes are proposed are within areas where full field investigations for natural resources have been completed and reviewed by ANR personnel. VHB concluded that none of the proposed changes altered its earlier assessment of the Project's impacts upon outstanding resource waters, headwaters, waste disposal, water conservation, shorelines, and water supply criteria, either because such resources are not present or that no change in the assessment will occur. As for the remaining natural resource criteria, VHB concluded that the changes will not have the potential for significant impacts at each location. In addition, the modifications will be undertaken in accordance with existing permits, or in accordance with amendments to existing permits, which VGS has filed with ANR.¹⁹

The Aesthetics Review Memorandum included as Attachment 3 demonstrates that the proposed Project Changes do not raise significant issues with regards to the relevant Section 248(b) criteria. The aesthetics review determined that only two of the proposed changes, relocating of MLV-2 & MLV-3, will result in a noticeable difference to the visibility of the Project. An assessment of these two changes showed that the relocation of the MLVs would not increase aesthetic impacts and may even slightly reduce visibility and associated impacts. Thus, the

¹⁵ *Joint Petition of Vt. Transco LLC*, Docket No. 7751, Order of 2/11/13 at 1, 3.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ *See Amended Petition of UPC Vt. Wind, LLC*, Docket No. 7156, Order of 3/24/09 at 12 (rejecting claims that modifications to wind project would result in undue water pollution and noting that "the Board's conclusion that the Project would not result in undue water pollution was based not on a highly detailed review of the site-specific construction activities, but rather on a review of the overall project site and on the protections provided by the federal and state permits").

proposed changes will not have the potential to raise a significant issue with respect to aesthetics.²⁰

The Archaeological and Historical Resources Memorandum, included as Attachment 4, demonstrates that the Project Changes do not have the potential for significant impact on archaeological sites or historic properties. The proposed changes will have no effect on historic properties. With respect to archeological sites, two of the changes are in the vicinity of significant sites previously identified in the course of Phase I/II studies for the Project. Following established protocol, a detailed plan for Phase III Data Recovery was already in place for these two sites that is consistent with archeological mitigation that has been conducted or is planned at other sites within the Project area. As a result, the proposed changes do not require any new or additional archaeological investigation beyond what has already been considered.

Finally, as described in the Non-Substantial Change Summary Memorandum, the proposed changes will have a minimal impact on the overall cost of the Project and do not require modifications to the Project budget of approximately \$154 million as filed with the Board on December 19, 2014 and as reaffirmed in the most recent quarterly cost update filed July 17, 2015.

When considered in the context of the overall Project, these are relatively minor modifications that do not meaningfully change the Project's size or scope. They do not represent modifications that have the potential for significant impact on the relevant Section 248 criteria. Therefore, Vermont Gas believes these proposed changes are non-substantial.

III. Conclusion

Based on the foregoing, Vermont Gas requests that the Board issue a determination that the Project Changes constitute neither a substantial change requiring a CPG amendment nor a material deviation from the approved plans. In addition, because the Project's CPG requires that construction of the Project be done in accordance with the plans and evidence submitted, Vermont Gas respectfully asks that the Board admit the revised exhibits provided herein to the record of this Docket to ensure compliance with Condition 1 of the CPG.²¹

As noted above, while none of the Project Changes pertain to the first eleven miles being constructed this year, Vermont Gas nonetheless respectfully requests a Board order as soon as possible. In particular, the construction in the vicinity of the Rocky Ridge golf course needs to occur between November 1, 2015 and February 28, 2016 to enable natural gas service to Middlebury and Vergennes residents in time for the 2016/2017 heating season. Construction

²⁰ *Id.* at 9 (recognizing that it is "certainly indisputable that the modifications to the Project will somewhat change its appearance," but "the key question is whether the modifications have the potential for significant adverse aesthetic impacts").

²¹ *See Joint Petitions of Vt. Transco LLC*, Docket No. 7751, Order of 2/11/13 at 3 (finding proposed changes were not substantial, admitting Petitioners revised plans to the record of the docket, and providing ten days from date of order for parties to file objections).

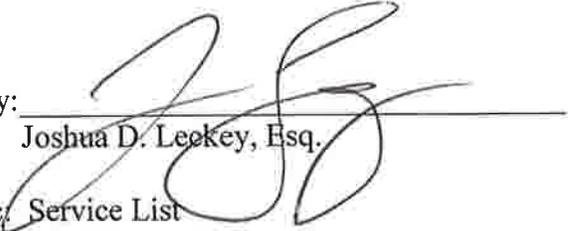
conditions in November are likely to be more favorable than later in the winter season. Further, the construction contractor intends to continue working late into the fall. Being able to access as many parcels as possible during the 2015 construction season will provide the contractor with additional construction flexibility, helping ensure that Vermont Gas can complete the entire Project by the fall of 2016.

Thank you in advance for your consideration and attention in this matter, and please let VGS know should you have any questions or require additional information about the proposed modifications.

Very truly yours,

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Enclosures

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